110—686

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 186.

DALLAS COUNTY, IN THE STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

JOHN W. McKENZIE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 27, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern division of the western district of Missouri, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1878, thereof, between John W. McKenzie, plaintiff, and Dallas County, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said Dallas County, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the eastern division of the western district of Missouri, dated as aforesaid.

[SEAL] H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—

A. KREKEL, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern Division Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this second day of October, A. D. 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) No. 944. United States circuit court, eastern division western district of Missouri. John McKenzie vs. Dallas County. Writ of error to the circuit court of the United States for the eastern division of the western distfict of Mo. Returned and filed day of , 187 . , clerk.

3 The United States of America to John W. McKenzie, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern division of the western district of Missouri, wherein Dallas County, in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I do hereby acknowledge due service of the within citation, this thirtieth day of September, A. D. 1880,

THO. C. FLETCHER,
Attorney for Defendant in Error.

(Indorsed:) 944. United States circuit court, eastern division western district of Missouri. John W. McKenzie vs. Dallas County. Citation. Filed , 187 . , clerk.

5 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, set:

Pleas before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri, at the April term, A. D. 1880, in case of John W. Mackenzie vs. The County of Dallas, in the State of Missouri, Nos. 200, 259, 944.

Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1873, there was filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri a petition in the words and figures following, to wit:

Petition.

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

JOHN W. MACKENZIE, PLAINTIFF,
vs.
THE COUNTY OF DALLAS, DEFENDANT.

In the circuit court of the United States for the western district of Missouri, April term, A. D. 1874.

The plaintiff, John W. Mackinzie, states that he is a citizen of the city

and county and State of New York; that the defendant, The County of Dallas, in the State of Missouri, is a corporation created by and existing under the laws of said State of Missouri, and a citizen of said State of Missouri.

Plaintiff further states that on the 28th day of December, 1871, at said district, the said defendant did, by its certain writings obligatory, dated on the day and year aforesaid, sealed with its seal and signed by the presiding justice of its county court, and attested by the signature of the clerk of said court, and numbered from 1 to 85, acknowledge itself to be in-
6 debted to the Laclede and Fort Scott Railroad Company, a corporation created and organized under and by virtue of an act of the general assembly of the State of Missouri entitled "An act to incorporate the Laclede and Fort Scott Railroad Company," approved Jan'y 11th, 1860, or bearer, by each of said writings, in the sum of one thousand dollars, which sums it covenanted to pay, at the German American Bank in the city of New York, to said Laclede & Fort Scott Railroad Company, or bearer, in fifteen years after date, with interest thereon at the rate of (10 %) ten per cent. per annum, payable semi-annually, at said bank, on the first days of January and July in each year, upon presentation and surrender of the coupons severally subjoined to said bonds at said bank as the said coupons severally become due and payable; and said bonds recited that they were severally issued pursuant to an order of the county court of Dallas County, Missouri, made on the eighteenth (18') of May, 1871, and amended on the nineteenth (19') day of June, 1871, and on the twelfth (12') of August, A. D. 1871, by authority granted in the charter of the said Laclede and Fort Scott Railroad Company, approved January 11th, 1860.

1st. Plaintiff further states, as first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 1, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is the owner for value and the bearer of the said coupon for said interest, and is entitled to recover thereon the said fifty dollars, with interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity..

2d. Plaintiff further states, as a second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 2, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still neglects & refuses, to pay the same; and the plaintiff was & is owner for value and the bearer of said coupon for said interest and is entitled to recover thereon the said fifty
7 dollars and interest thereon, and he herewith files said coupons and prays judgment for the same, with ten per cent. interest thereon from maturity.

3. Plaintiff further, states as third cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 5, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupons and prays judgment for the same, with ten per cent. interest thereon from maturity.

4. Plaintiff further states as fourth cause for action that an instalment of interest of fifty dollars on another of said bonds, to wit, bond No. 8, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected & refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is the owner for value and bearer of the said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

5. Plaintiff further states, as fifth cause for action, that an instalment for interest of fifty dollars on one of said bonds, to wit, bond No. 9, fell due on the 1st day of January, 1873, said defendant though often requested, has neglected and refused, and still does refuse & neglect, to pay the same; and the plaintiff was and is the owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

6. Plaintiff further states, *that* as sixth cause for action, that an instalment of interest for fifty dollars on one of the said bonds, to wit, bond No. 10, full due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupons for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files
8 said coupon and prays judgment for same, and ten per cent. interest thereon from maturity.

7. Plaintiff further states, as seventh cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 11, fell due on the 1st day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupons for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for same, and ten per cent. interest thereon from maturity.

8. Plaintiff further states, as eighth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 11, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of the said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

9. Plaintiff further states, as ninth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 12, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was & is the owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for same, with 10 per ct. interest thereon from maturity.

10. Plaintiff further states' as tenth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 12, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

11. Plaintiff further states, as eleventh cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 29, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

12. Plaintiff further states, as twelfth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 30, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

13. Plaintiff further states, as thirteenth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 31, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for same, with ten per ct. interest thereon from maturity.

14. Plaintiff further states as fourteenth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 32, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was & is owner for value & bearer of said coupon for said interest, & is entitled to recover thereon the said fifty dollars & interest thereon, & he herewith files said coupon & prays judgment for the same, with ten per cent. interest thereon from maturity.

15. Plaintiff further states, as 15th cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 33, fell due on the first day of January, 1873, and said defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, and ten per cent. interest thereon from maturity.

16. Plaintiff further states, as the sixteenth cause for action, that an

instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 34, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupons for said interest, and is entitled to recover said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

17. Plaintiff further states, as seventeenth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 35, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and the plaintiff was & is owner & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same with ten per cent. interest thereon from maturity.

18. Plaintiff further states, as eighteenth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 36, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest, thereon from maturity.

19. Plaintiff further states, as nineteenth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond
11 No. 37, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; & the plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with 10 per cent. interest thereon from maturity.

20. Plaintiff further states, as twentieth cause for action, that an instalment of interest of fifty dollars on one of the bonds, to wit, bond No. 38, fell due on the first day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for same, with ten per cent. interest thereon from maturity.

21. Plaintiff further states, as twenty-first cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 39, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for same, with ten per cent. interest thereon from maturity.

22. Plaintiff further states, as twenty-second cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond

No. 40, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the said coupon for said interest; & the plaintiff was & is owner for value and bearer of the said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

23. Plaintiff further states, as 23d cause of action, that an instalment of *of* interest of fifty dollars on one of said bonds, to wit, bond No. 40, fell due on the 1st day of July, 1873, and defendant, though often re-
12 quested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for same, with ten per cent. interest thereon from maturity.

24. Plaintiff further states, for twenty-fourth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 41, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

25. Plaintiff further states, for twenty-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 41, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was & is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars & interest thereon, & he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

26. Plaintiff further states, for twenty-sixth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 42, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect and refuse, to pay the same; and plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for same, with ten per cent. interest thereon from maturity.

27. Plaintiff further states, for twenty-seventh cause of action, that an instalment of fifty dollars on one of said bonds, to wit, bond No. 42, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the
13 same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, & he herewith files said coupon and prays judgement for the same, with 10 per ct. interest thereon from maturity.

28. Plaintiff further states, for twenty-eighth cause of action, that an in-

stalment of interest of fifty dollars on one of said bonds, to wit, bond No. 43 fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was & is owner for value & bearer of said coupon for said interest, & is entitled to recover thereon said fifty dollars & interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

29. Plaintiff further states, for twenty-ninth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 43, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and pray' judgment, for same, with 10 per ct. interest from maturity.

30. Plaintiff further states, for thirtieth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 44, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected , and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for same, with ten per cent. interest thereon from maturity.

31. Plaintiff further states for thirty-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 44, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dol-
14 lars and interest thereon, and he herewith files said coupon, and prays judgement for the same, with ten per cent. interest thereon from maturity.

32. Plaintiff further states, for thirty-second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 45, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, and 10 per cent. interest from maturity.

33. Plaintiff, further states for thirty-third cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 45, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for same, and 10 per cent. interest thereon from maturity.

34. Plaintiff further states, for thirty-fourth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 46, fell due on the 1st day of January, 1873, and defendant, though often

requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for same, with ten per cent. interest thereon from maturity.

35. Plaintiff further states, for thirty-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 46, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

36. Plaintiff further states, for thirty-sixth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 47, fell due on the 1st day of January, 1873, and the defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and the plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest from maturity.

37. Plaintiff further states, for thirty-seventh cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 48, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

38. Plaintiff further states, for thirty-eighth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 49, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

39. Plaintiff further states, for thirty-ninth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 50, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was & is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars, and interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

40. Plaintiff further states, for fourtieth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond number 51, fell due on the 1st day of January, 1873, and defendant,

though often requested, has neglected & refused, and still neglects & refuses, to pay the same; and plaintiff was and is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

41. Plaintiff further states, for forty-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 52, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with 10 per ct. interest thereon from maturity.

42. Plaintiff further states, for forty-second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 53, fell due on the 1st day of January, 1873, and the defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is the owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

43. Plaintiff further states, for forty-third cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 54, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect and refuse, to pay the same; and plaintiff was & is the owner for value and the bearer of said coupon for said interest and is entitled to recover thereon the said coupon & interest thereon, and he herewith files said coupon and prays judgment for the same, with 10 p'r ct. interest thereon from maturity.

44. Plaintiff further states, for forty-fourth cause of action, that
17 an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 54, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was & is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

45. Plaintiff further states, for forty-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 55, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

46. Plaintiff further states, for forty-sixth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 55, fell due on the 1st day of January, 1873, and defendant, though often re-

quested, has neglected & refused, and still does neglect and refuse, to pay the same; and the plaintiff was & is owner for value & the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

47. Plaintiff further states, for forty-seventh cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 56, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

48. Plaintiff further states, for forty-eighth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 58, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and the
18 bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with 10 per ct. interest thereon from maturity.

49. Plaintiff further states, for forty-nineth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 58, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was & is the owner for value and the bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

50. Plaintiff further states, as fiftieth cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 59, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

51. Plaintiff further states, as fifty-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 60, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

52. Plaintiff further states, as fifty-second cause for action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 60, fell due on the 1st day of July, 1873, and defendant, though often re-

quested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said
19 fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

53. Plaintiff further states, for fifty-third cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 61, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; & plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest, and he herewith files said coupon and pray, judgement for the same, with ten per cent. interest thereon from maturity.

54. Plaintiff further states, as fifty-fourth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 61, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest thereon, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same with ten per cent. thereon from maturity.

55. Plaintiff further states, for fifty-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 62, fell due on the 1st day January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

56. Plaintiff further states, for fifty-sixth clause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 63, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, & still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for
20 the same, with ten per cent. thereon from maturity.

57. Plaintiff further states, for fifty-seventh cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 63, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same with ten per cent. interest thereon from maturity.

58. Plaintiff further states, for fifty-eighth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 64, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said cou-

pon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

59. Plaintiff further states, for fifty-ninth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 65, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

60. Plaintiff further states, for sixtieth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 65, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgment for the same, with ten per cent. interest thereon from maturity.

21 61. Plaintiff further states, for sixty-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 66, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect and refuse to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

62. Plaintiff further states, for sixty-second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 66, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected and *requested* [refused] and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

63. Plaintiff further states, for sixty-third cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 67, fell due on the 1st day January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

64. Plaintiff further states, for sixty-fourth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 67, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected , and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value and bearer of said coupon for said

interest, and is entitled to recover said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for the same, & ten per cent interest thereon from maturity.

65. Plaintiff further states, for sixty-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit,
22 bond No. 68, fell due on the first day of January, 1873, and defendant, though often requested, has neglected and refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

66. Plaintiff further states, for sixty-sixth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 68, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected , and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

67. Plaintiff further states, for sixty-seventh cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 69, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, & still does neglect & refuse, to pay the same; & plaintiff was & is owner for value and bearer of said coupon for said interest, & is entitled to recover thereon the said fifty dollars & interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

68. Plaintiff further states, for sixty-eighth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 69, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected & refused, & still does neglect & refuse, to pay the same; & plaintiff was & is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

69. Plaintiff further states, for sixty-nineth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 70, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse,
23 to pay the same; and plaintiff was & is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, & he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

70. Plaintiff further states, for seventieth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 71, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars &

interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

71. Plaintiff further states, for seventy-first cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 72, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, & still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, & he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

72. Plaintiff further states, for seventy-second cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 72, fell due on the first day of July, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars & interest thereon, & he herewith files said coupon and prays judgement for the same, with ten per cent. interest from maturity.

73. Plaintiff further states, for seventy-third cause of action, that an instalment of interest of fifty dollars on one of the said bonds, to wit, bond No. 73, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said
24 fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

74. Plaintiff further states, for seventy-fourth cause of action, that an instalment of interest of fifty dollars on one of said bond', to wit, bond No. 74, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected and refused, & still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, & is entitled to recover thereon the said fifty dollars and interest thereon, & he herewith files said coupon & prays judgement for the same, with ten per cent. interest thereon from maturity.

75. Plaintiff further states, for seventy-fifth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 74, fell due on the 1st day of July, 1873, and defendant, though often requested, has neglected & refused, and still does neglect & refuse, to pay the same; and plaintiff was and is owner for value & bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon and prays judgement for the same, with ten per cent. interest thereon from maturity.

76. Plaintiff further states, for seventy-sixth cause of action, that an instalment of interest of fifty dollars on one of said bonds, to wit, bond No. 75, fell due on the 1st day of January, 1873, and defendant, though often requested, has neglected & refused, & still does neglect & refuse, to pay the same; and plaintiff was & is owner for value and bearer of said coupon for said interest, and is entitled to recover thereon the said fifty dollars and interest thereon, and he herewith files said coupon & prays judgement for the same, with ten per cent. interest from maturity.

By reason of all of which the plaintiff avers that defendant is indebted to him in the sum in gross of three thousand eight hundred dollars, with interest from the maturity of the various demands as above set out, for which, with costs, he demands judgement.

FLETCHER & REYNOLDS,
Att'ys for Pl'ff.

Thereupon, on the 20th day of December, A. D. 1873, there was issued out of said clerk's office a summons in the words and figures following, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *set:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon the County of Dallas, a corporation existing under and created by the laws of the State of Missouri, and a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 20th day of April next, then and there to answer the complaint of John W. Mackenzie, a citizen of the State of New York, as set forth in the petition filed in said court on the 13th day of December, A. D. eighteen hundred and seventy-three. Hereof fail not, and have you then and there this writ.

Witness the honorable Nathan Clifford, presiding justice of the Supreme Court of the United States, the 20th day of December, A. D. eighteen hundred and seventy-three.

Issued at office, in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court.

Marshal's return.

Upon said summons the United States marshal for said district made the following return, to wit:

I certify that I executed the within writ by delivering a true copy of the within summons together with a copy of the petition filed in this cause, to Thomas B. Morrow, county clerk of Dallas County, on the 27th day of December, 1873, at Buffalo, in the western district of Missouri.

GEO. SMITH, *U. S. Marshal.*
By S. O. TENNY, *Deputy.*

And afterwards, at a regular stated term of the circuit court of the United States for the western district of Missouri, begun and held on the third Monday, the 20th day of April, A. D. 1874, at Jefferson City, in said district, the following proceedings were had, among others, on the 22d day of April, in said last-mentioned year, to wit:

26 JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200.

Now comes the plaintiff, by his attorneys, Fletcher & Reynolds, and the defendant, although duly served with process more than fifteen days before the commencement of this term of court, and solemnly called, comes not, but makes default, whereby this action remains against it herein undefended; but because this action is founded upon instruments of writing for the direct payment of money the court proceeds to ascertain the amount of debt and damages due and owing by the said defendant to the said plaintiff and doth assess the same at the sum of four thousand one hundred and seven dollars and seventy-eight cents.

(On the margin:) This judgment set aside. See page 257 of this record (page 28 of this transcript).

Judgment.

It is therefore considered, ordered, and adjudged by the court that the plaintiff have and recover of and against the said defendant as well the said sum of four thousand one hundred and seven dollars and seventy-eight cents, as aforesaid assessed, as also his costs and charges herein laid out and expended, and have thereof execution.

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had on the 29th day of April, A. D. 1874, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200.

Now comes the defendant, by its attorney, J. P. Ellis, and files motion to set aside the judgment entered herein.

And said motion to set aside judgment, so filed as aforesaid, is in the words and figures following, to wit:

Motion to set aside judgment.

In the circuit court of the United States for the western district of Missouri.

JOHN W. MACKENZIE, PL'TF,
vs.
THE COUNTY OF DALLAS, DEF'T. } No. .

And now comes Dallas County, by her attorney, and moves the court to set aside the judgment in the above-entitled cause, rendered
27 against the defendant at the present term thereof, and that the court permit the defendant to plead to the petition therein, and assigns therefor the following reasons:

1st. That John P. Ellis is the attorney for the said County of Dallas and in all the suits against her on account of subscription to railroads and indebtedness thereby incurred. The said John P. Ellis resides in Springfield, in Greene County, Mo., and was only informed on the 26th day of April, 1874, that the above-entitled cause had been brought; that he has been informed that the county clerk of said county said he had sent the writ and copy of petition to said attorney in time to have appeared had the papers been secured and obtained by the said attorney, nor had he notice or knowledge of the bringing of said action until said date; that if said judgment be set aside the defendant has a good and meritorious defense to the cause of action as set forth in the plaintiff's petition, which he asks to be permitted to make.

DALLAS COUNTY,
By JOHN P. ELLIS, *Att'y.*

STATE OF MISSOURI,
County of Cole, ss:

I, John P. Ellis, upon oath say that the matters and things as set forth in the foregoing motion and application are true as I verily believes.

JOHN P. ELLIS.

Subscribed and sworn to before me this 29th day of April, 1874.

M. M. PRICE, *Clk.*,
By C. M. WARD, *D. C.*

And afterwards, at said last mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had on the 30th day of April, 1874, to wit:

JOHN W. MACKENZIE
vs. } No 200.
DALLAS COUNTY.

Now comes the defendant, by its attorney, J. P. Ellis, and submits to the court here the motion heretofore filed, to set aside the judgment herein: Whereupon it is ordered by the court that said motion be held under advisement, that defendant have leave to exhibit answer on or before the 10th day of May, serving copy thereof on plaintiff's attorneys, and cause continued until the 19th day of May next.

28 And afterwards, on the 19th day of May, 1874, it being at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in said case, to wit:

JOHN W. MACKENZIE
vs. } No. 200.
DALLAS COUNTY.

Judgment set aside.

Now again come the said parties, the plaintiff by Fletcher & Reynolds and the defendant by John P. Ellis, and the motion heretofore filed herein

to set aside the judgment by default being submitted to the court, and being seen and heard, the court doth order that said motion be sustained, and the said judgment by default rendered herein be, and the same is hereby, set aside and for naught held and esteemed.

The following proceedings were also had on said last-named day, viz:

JOHN W. MACKENZIE. *vs.* DALLAS COUNTY. } Nos. 200 & 259.

Consolidation of cases.

Now come the parties aforesaid, by their attorneys, and by consent it is ordered by the court that the two cases now pending in this court under the above title be, and the same are hereby, consolidated.

It is further ordered that defendant file answer instanter, which is accordingly done; and thereupon the plaintiff files demurrer to answer.

The record and proceedings had in the case No. 259, of John W. Mackenzie, plaintiff, against Dallas County, defendant, prior to the foregoing order consolidating said case with No. 200, between the same parties, are as follows, to wit:

Be it remembered that on the 28th day of March, A. D. 1874, there was filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri a petition in words and figures as follows, to wit:

Petition.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

29 In the circuit court for the western district of Missouri, April term, 1874.

JOHN W. MACKENZIE, PLAINTIFF,
vs.
THE COUNTY OF DALLAS, IN THE STATE OF Missouri, defendant.

Plaintiff, a citizen of the county and State of New York, complains of the county of Dallas, in the State of Missouri, which he avers to be a citizen of said State of Missouri, and states that defendant, by its writings obligatory, each dated on the twenty-eighth day of December, 1871, at said district, sealed with its seal, acknowledged itself indebted to the Laclede & Fort Scott Railroad Company or bearer in the sum of one thousand dollars, which sum it promised to pay to said company or bearer, at the German American Bank, in the city of New York, fifteen years after date, with interest thereon at the rate of ten per cent. per annum, payable semi-annually at the said bank on the first days of January and July in

each year, upon presentation and surrender of the coupons annexed to said writings obligatory as they severally become due and payable; and said bonds severally recited that they were issued pursuant to an order of the county court of Dallas County made on the eighteenth (18th) of May, A. D. 1871, and amended on the nineteenth of June, 1871, and on the 12th of August, 1871, by authority granted in the charter of the Laclede and Fort Scott Railroad Company, approved January 11th, 1860; and plaintiff states that an instalment of interest on one of said bonds, number twenty-nine (29), amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

1st. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

2d. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty-one, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

3. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty-two, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

4. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty-three, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

5. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty-four, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of the coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

6. Plaintiff further states that an instalment of interest on one of said bonds, numbered thirty-five, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of the coupon for said interest, and is entitled to recover thereon the sum of fifty dollars and

interest thereon, for which he prays judgment, with 10 per cent. interest.

7. Plaintiff further states that an instalment of interest on one
31 of said bonds, numbered thirty-six, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

8. Plaintiff further states that an instalment of interest on another of said bonds, numbered thirty-seven, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that the plaintiff was and is the bearer of said coupon for said interest, and is entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

9. Plaintiff further states that an instalment of interest on another of said bonds, numbered thirty-eight, amounting to fifty dollars, fell due on the first day of July, 1873, and that said defendant neglected to pay the same, and that plaintiff was and is the bearer of the coupon for said interest, and entitled to recover thereon the said sum of fifty dollars and interest thereon, for which he prays judgment, with ten per cent. interest.

10. Plaintiff states that by reason of said several promises the defendant has become and is liable to pay plaintiff said several sums of money, but has neglected to do so, and an action hath accrued to plaintiff to have and recover of said defendant the said several sums of money, in each of said counts named, with interest on each of said sums of fifty dollars at the rate of seven per cent. per annum from the first day of July, 1873. Plaintiff prays judgment for five hundred dollars and interest thereon as aforesaid. Plaintiff herewith files said coupons.

FLETCHER & REYNOLDS,
Att'ys for Plaintiff.

And afterwards, on the 25th day of March, 1874, there was issued out of said clerk's office a summons in words and figures as follows, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *set:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon The County of Dallas, a citi-
32 zen of said district, that he be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 20th of April next, then and there to answer the complaint of John W. Mackenzie, citizen of the State of New York, as set forth in the petition filed in said court on the 25th day of March, A. D. eighteen hundred and seventy-four. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 25th day of March, A. D. eighteen hundred and seventy-four.

Issued at office, in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By C. M. WARD, *D. C.*

Upon said summons the United States marshal for said district made the following return, to wit:

Marshal's return.

I hereby certify that I executed this writ by delivering personally to Thos. B. Morrow, clerk of the county court of the within-named county of Dallas, a true copy of this writ, with a copy of the petition filed in this cause. All done this 1st day of April, A. D. 1874, in the county of Dallas, western district of Missouri.

GEORGE SMITH,
U. S. Marshal,
By H. METCALF, *Deputy.*

And afterwards, at a regular stated term of the circuit court of the United States in and for the western district of Missouri, begun and held on the third Monday (the 20th day) of April, A. D. 1874, at Jefferson City, in said district, the following proceedings were had on the 22d day of April, in said last-mentioned year, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 259.

Now comes the plaintiff, by his attorneys, Fletcher & Reynolds, and the defendant, although duly served with process more than fifteen days before the commencement of this term of court, and solemnly called, comes not, but makes default, whereby this action remains against it herein
33 undefended; but because this action is founded upon instruments of writing for the direct payment of money the court proceeds to ascertain the amount of debt and damages due and owing by said defendant to the said plaintiff, and doth assess the same at the sum of five hundred and thirty dollars.

Judgment.

It is therefore considered, ordered, and adjudged by the court that the plaintiff have and recover against the said defendant as well the said sum of five hundred and thirty dollars, the debt and damages aforesaid assessed, as also his costs and charges in this behalf laid out and expended, and have thereof execution.

(On the margin:) This judgment set aside. See page 257 of this record, page 34 of this transcript.

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had on the 29th day of April, 1874, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 259.

Now comes the defendant, by its attorney, J. P. Ellis, and files motion to set aside the judgment entered herein.

And said motion so filed as aforesaid is in words and figures as follows, to wit:

Motion to set aside judgment.

In the United States circuit court for the western district of Mo.

JOHN W. MACKENZIE
vs.
THE COUNTY OF DALLAS.

Now comes Dallas County, by attorney, and moves the court to set aside the judgment in the above-entitled cause rendered against the def't at the present term thereof, and that the court permit the def't to plead to the petition herein, and assigns therefor the following reasons:

That John P. Ellis is the attorney for said county in all the suits against her on account of railroad indebtedness; that he resides at Springfield, Mo., and was only informed on the 26th day of April, 1874, that the above-entitled suit had been brought; that he was then informed that the county clerk of Dallas County said he had sent the writ and copy of petition to said att'y in time to have appeared had the papers been received; that said papers were never received by said att'y, nor had he notice
34 or knowledge of the bringing of said action until said date; that if said judgment be set aside def't has a good and meritorious defense to the cause of action in petition set out, which he asks to be permitted to make.

DALLAS COUNTY.
By JOHN P. ELLIS, *Att'y.*

STATE OF MO.,
Cole County:

I, John P. Ellis, upon oath, say that the matters and things set out in the foregoing motion and application are true, as I verily believe.

(Signed) JOHN P. ELLIS.

Subscribed and sworn to before me this 29th day of April, 1874.

M. M. PRICE, *Clerk,*
By C. M. WARD, *D. C.*

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 30th day of April, 1874, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 259.

Now comes the defendant, by its attorney, J. P. Ellis, and submits to

the court here the motion heretofore filed to set aside the judgment herein. Whereupon it is ordered by the court that said motion be held under advisement; that defendant have leave to exhibit answer on or before the 10th day of May next, serving copy thereof by mail on plaintiff's attorneys, and cause continued until May 19th, 1874.

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 19th day of May, 1874, to wit:

JOHN W. MACKENZIE }
vs. } No. 259.
DALLAS COUNTY. }

Judgment set aside.

Now again come the parties aforesaid, by their attorneys, the plaintiff by Fletcher & Reynolds and the defendant by John P. Ellis, and the motion heretofore filed herein to set aside the judgment by default being submitted to the court, and being seen and heard, the court doth order
35 that said motion be sustained, and that the said judgment by default rendered herein be, and the same is hereby, set aside and for naught held and esteemed.

And the said answer so filed on the 19th day of May, 1874, in the consolidated cases, Nos. 200 and 259, of J. W. Mackenzie, plaintiff, vs. Dallas County, defendant, is in the words and figures following, to wit:

Answer.

In the United States circuit court for the western dist. of Missouri.

J. W. MCKENZIE }
vs.
THE COUNTY OF DALLAS. }

Now comes Dallas County, by att'y, and answering pl'ff's petition in the above cause denies that it did, on the 28th day of Dec., 1871, promise to pay to the Laclede & Fort Scott R. R. Co. or bearer the sum of one thousand doll's fifteen years after date, with interest at the rate of ten % per annum, payable semi-annually, as in petition specifically set out; denies that def't, by its writing obligatory or coupons, did promise to pay the different sums of money as in petition specifically alleged, in the manner therein set out; denies that pl'ff was at the institution of this action, or is now, the owner for value of any of the bonds or coupons in said petition declared on.

And def't, for a further defence, avers the bonds mentioned in the petition recite that they were issued pursuant to an order of the county court of Dallas Co. made on the 18th day of May, 1871, amended on the 19th day of June, 1871, & on the 12th day of August, 1871; but, as def't alleges, no order or orders authorizing or permitting the issuing of said bonds was ever made by said court as recited in said bonds; and, further,

that neither on the said 18th day of May or on the said 19th day of June, 1871, was any county court in Dallas County had or held, either in regular, adjourned, or special term; but, as def't avers, two of the justices of the said court, without authority of law, did fraudulently and corruptly make a pretended order, though not as a county court; that the county of Dallas subscribed to the capital stock of the L. & Ft. S. R. R. Co. the sum of eighty-five thousand doll's, as an additional subscription to that theretofore made of the sum of one hundred and fifty thousand doll's; that such subscription should be paid in bonds of said county sim-
36 ilar to those described in petition; but, as such order says, the same is made upon these express conditions precedent to the taking of such stock and issuing of such bonds, viz:

1. That said bonds shall not be signed or delivered until all contracts made by said R. R. Co. with Edward Burges, be annulled and finally terminated and set aside.

2. That unless the county court of Dallas County, or the clerk thereof, be notified in writing by said R. R. Co. of their acceptance of the terms of said order, with all its conditions and reservations, on or before the 31st day of Dec., 1871, then said order should be null and void and of no binding effect in law or equity, and without damage to Dallas County.

But, as def't avers, in truth and fact there were contracts in force at the time of such pretended order between said R. R. Co. and Edward Burgess, nor were they at the date of issuing said bonds annulled or finally terminated or set aside. Also, in truth and fact said R. R. Co. did not notify said county court, nor the clerk thereof, of their acceptance of said order, and its conditions and reservations, on or before the 31st day of Dec., 1871, nor did they before said date nor since accept the same.

And def't further says that at the term of said court held Aug. 12th, 1871, no order was made by the said court taking stock in said R. R. Co. nor authorizing in any way the issuing of said bonds; and def't also says said bonds were fraudulently and corruptly signed and issued by the presiding justice of said court and attested by the clerk thereof, but without authority or any order therefor by the said court, all of which facts appear clearly by an examination of the pretended orders referred to in said bonds; and, further, def't avers said bonds were fraudulently and corruptly issued as aforesaid after the 31st day of Dec., 1871, and were antedated without the knowledge or authority or order of said court.

And def't further alleges that at the date of said pretended orders the last annual assessment of the said county of Dallas was less than $1,500,000, and said county had already subscribed to the capital stock of said R. R. Co. the sum of $150,000. Wherefore def't says said pretended orders were and are without authority of law, and said bonds null and void, and asks to be discharged with his costs.

JOHN P. ELLIS,
Att'y for Dallas County.

And the demurrer to said answer, filed on said 19th day of May,
37 1874, is in words and figures as follows, to wit:

Demurrer to answer.

In the circuit court of the United States for the western district of Missouri.

JOHN W. MACKENZIE, PL'FF.,
vs.
DALLAS COUNTY, DEF'T.

Now comes the said plaintiff, by his attorney, Tho. C. Fletcher, and demurs to the answer of said defendant filed herein, and for cause of demurrer assigns the following causes:

1. Said answer does not state facts sufficient to constitute a defence to the action of plaintiff.

2. The admissions of the answer are sufficient to entitle plaintiff to recover.

3. The denials in the answer are inconsistent with the admissions made therein.

4. It is no defence that the bonds are not produced, the coupons sued on being filed with the clerk.

5. It is sufficient that plaintiff is the bearer of the coupons; the ownership is not material to defendant.

6. It is not denied by the answer that the county court had authority, under the act incorporating the Laclede & Fort Scott Railroad Company, approved January 11th, 1860, to issue said bonds.

7. The answer admits the issue of the bonds and does not deny the authority for their issue recited in them.

8. The bonds on their face import a compliance with the law, and defendant is estopped from denying the regularity of such compliance.

9. The answer does not charge the plaintiff as being a party or having knowledge of the alleged frauds in issuing said bonds.

THO. C. FLETCHER,
Att'y for Plaintiff.

The following further proceedings were also had in said consolidated cases on said last-mentioned day, to wit, May 19, 1874:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } No. 200 & 259.

Demurrer sustained.

Now again come the said parties, by their attorneys, the plaintiff by Fletcher & Reynolds and the defendant by John P. Ellis, and the demurrer to the answer herein being submitted to the court, and seen and
38 heard, the court doth order that said demurrer be sustained, and the said defendant excepting to the ruling of the court and declining to amend its said answer, but declaring it will abide by the same, wherefore the plaintiff ought to recover by reason of the premises; and this action being founded upon certain instruments in writing for the direct payment of money, the court proceeds to ascertain the amount of the debt and damages due and owing by defendant to plaintiff, and doth assess the same

at the sum of four thousand six hundred and sixty-four dollars and eighty-three cents.

Judgment.

It is therefore considered, ordered, and adjud'ged by the court that the plaintiff have and recover against the said defendant as well the said sum of four thousand six hundred and sixty-four dollars and eighty-three cents, the debt and damages aforesaid assessed, as also his costs and charges in this behalf laid out and expended, and have thereof execution.

MEMORANDUM.—This judgment bears 7 per cent. interest per annum.

And afterward, on said last-named day, the following further proceedings were had in this case, to wit:

JOHN W. MACKENZIE } Nos. 200 & 259.
vs.
DALLAS COUNTY. }

It is now ordered by the court, on motion of John P. Ellis, defendant's attorney, that defendant have leave to perfect appeal herein to the Supreme Court of the United States on or before July 6th, 1874.

And afterwards, at an adjourned day of said last-mentioned term of said court, begun and held as aforesaid, the following further proceedings were had on the 6th day of July, 1874, to wit:

JOHN W. MACKENZIE } Nos. 200 & 259.
vs.
DALLAS COUNTY. }

Appeal bond filed.

Now comes John P. Ellis, attorney for defendant, and presents to the court bond in the sum of five hundred dollars, which is approved, and thereupon a writ of error is allowed in the above cause, and the proceedings and record herein are ordered to be certified to the Supreme Court of the United States.

And said bond so presented as aforesaid is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, Dallas County, as principal, and Jas. Southard and E. M. Padget, as securities, are held and firmly bound unto John W. Mackenzie in the full and just sum of five hundred dollars, to be paid to the said John W. Mackenzie, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first
39 day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at the April term, 1874, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between John W. Mackenzie, plaintiff, and the County of Dallas, in the State of Missouri, defendant, judgment was rendered against the said County of Dallas, and the said County of Dallas, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John W. Mackenzie citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said County of Dallas shall prosecute said writ to effect, and answer all damages and costs if it fail to make good said plea, then the above obligation to be void; else to remain in full force and virtue.

[SEAL COUNTY COURT.] T. B. MORROW,
Clk Co. Court.
JAS. SOUTHARD. [SEAL.]
E. M. PADGET. [SEAL.]

Approved by—
(Signed) A. KREKEL, *Judge.*

STATE OF MISSOURI,
County of Dallas, ss:

We, James Southard and E. M. Padget, upon oath say we are resident freeholders of the aforesaid county, and that we are worth, over and above all debts and incumbrances, at least the sum of two thousand dollars.

Witness our hands this 1st day of July, 1874.

JAS. SOUTHARD.
E. M. PADGET.

Subscribed and sworn to before me this July 1st, 1874.

Witness my hand and the seal of the county court, at office in Buffalo, the day & year above mentioned.

T. B. MORROW, *Clk.* [SEAL.]

And afterwards, at the regular stated term of said circuit court, begun and held on the third Monday, the 16th day, of April, 1877, the following further proceedings were had on said last-mentioned day, to wit:

40 JOHN W. McKENZIE
vs. } 200, 259.
DALLAS COUNTY.

This day comes Joseph Shippen, for the plaintiff, and files withdrawal of the demurrer of plaintiff to the defendant's answer in the above-entitled cause. (Said withdrawal is copied on page 42 of this transcript.)

And afterwards, on the 15th day of September, 1877, it being in vacation of said circuit court, the following further proceedings were had in this case, to wit:

JOHN W. MACKENZIE
vs. } 944, 259.
DALLAS COUNTY.

There is this day received by mail a mandate from the Supreme Court of the United States in the above-entitled cause ordering, among other things, that this court enter judgment upon the demurrer for the defendant, unless the plaintiff shall withdraw his demurrer and proceed to trial within such time and upon such terms as this court may direct. Thereupon comes the plaintiff and refiles herein a written withdrawal of his demurrer.

Said mandate so as aforesaid received is in the words and figures following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district of Missouri, greeting:

[SEAL.]

Whereas lately, in the circuit court of the United States for the western district of Missouri, before you or some of you, in a cause between John W. Mackenzie, plaintiff, and the County of Dallas, in the State of Missouri, defendant, wherein the judgment of the said circuit court entered in said cause is in the following words, viz:

"It is considered, ordered, and adjudged by the court that the plaintiff have and recover against the said defendant as well the said sum
41 of four thousand six hundred and sixty-four dollars and eighty-three cents, the debt and damages aforesaid assessed, as also his costs and charges in this behalf laid out and expended, and have thereof execution.

"MEMORANDUM.—This judgment bears 7 per cent. interest per annum."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-six, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said defendant recover against the said plaintiff, John W. Mackenzie, eighty-six dollars and seventy-four cents for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enter judgment upon the demurrer for the defendant below, unless the plaintiff below shall withdraw his demurrer and proceed to trial within such time and upon such terms as the circuit court may direct.

2d April, 1877.

You, therefore, are hereby commanded that such execution & further proceedings be had in the said cause, in conformity with the opinion & judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness, the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-seven.

Costs of defendant: clerk, $66.74; attorney, $20.00—$86.74.

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

42 And the withdrawal of the demurrer so filed as aforesaid is in the words and figures following, to wit:

Withdrawal of demurrer.

In the U. S. circuit court for the western district of Missouri.

JOHN W. MCKENZIE, PLAINTIFF,
vs.
DALLAS COUNTY, DEFENDANT. } No. 200, 259.

And now again comes the plaintiff and withdraws his demurrer to defendant's answer herein.

THOS. C. FLETCHER, *Pl'ff's Att'y.*
Per J. S.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday, the 19th day, of November, A. D. 1877, the following further proceedings were had on said last-mentioned day, to wit:

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } 944, 259.

This day comes the plaintiff, by his attorney, T. C. Fletcher, esq., and, on motion, leave is given him to withdraw the the demurrer heretofore filed by him in this cause to the answers of said defendant, and thereupon the said plaintiff by leave of the court files his replication to said answer.

Said replication so filed as aforesaid is in the words and figures following, to wit:

Replication to answer.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In the circuit court, western district of Missouri, Nov. term, 1877.

JOHN W. MACKENZIE
vs.
DALLAS COUNTY. } Consolidation of No. 200 & 259.

Now comes the said plaintiff, by his attorney, and by leave of the court first had obtained, for replication to defendant's answer herein, states that he has not any knowledge or information sufficient to enable him to form a belief as to whether the order of the county court of said Dallas County, that the said county subscribes to the capital stock of the Laclede & Fort Scott Railroad Company the sum of eighty-five thousand dollars, as alleged in the said answer of defendant, was made
43 by two or any other number of the justices of the said county court, or that they made said order fraudulently or corruptly, or that the said order contained any condition precedent to the issue of said bonds, or whether the alleged conditions have or have not been complied with; or that there was any neglect or failure on the part of the county court or justices thereof to perform their part, or that there was any neglect or failure of the railroad company to perform its part, of any bargains, or agreements, or conditions towards each other in reference to the issue or delivery of said bonds, or as to the making or accepting of any subscription to the stock of said company by the said county; or what contracts, if any, the said railroad company had at any time with Edward Burgess, or any other person, or when any such contracts were made or when annulled, if at all; or what notices, if any, the said railroad company was under any obligations to give the county court of its acceptance of the subscription to its stock by the county, or whether the railroad company did or did not comply with such obligation or any other obligation to the county; or as to whether the said bonds were or were not fraudulently or corruptly signed or issued by the presiding justice or attested by the clerk through any improper motive; or that said bonds were antedated with or without the knowledge or authority or order of the county court, or that they were antedated at all; or that at the date of the orders recited in the bonds, or at any other time, the last or any other annual assessment of said Dallas County was less than one and a half million dollars; or that the county had before that time, or at any other time, already subscribed to the capital stock of said railroad company the sum of one hundred & fifty thousand dollars or any other sum.

And the said plaintiff, for further replication to defendant's said answer, says that the said charter recited in said bond gave authority to the said county court to subscribe to the stock of said company, and that the said county exercised the said authority by the issue of said bonds numbered from 1 to 85 consecutively, and that said bonds were so numbered and issued in words and figures as follows:

No. .] UNITED STATES OF AMERICA. [$1,000.

44 *Bond of the county of Dallas, State of Missouri.*

Interest ten per cent. per annum.

Know all men by these presents, that the county of Dallas, in the State of Missouri, is indebted to the Laclede & Fort Scott Railroad Company or bearer in the sum of one thousand dollars, lawful money of the United States of America, which the said county of Dallas promises to pay at the German American Bank in the city of New York fifteen years after date, with interest thereon at the rate of ten per cent. per annum, payable semi-annually at said bank, on the first days of January & July in each year, upon presentation and surrender of the annexed coupons as they severally become due and payable.

This bond is issued pursuant to an order of the county court of the county of Dallas made on the eighteenth (18th) of May, A. D. 1871 (and amended on the (19) nineteenth of June, A. D. 1871, and on the twelfth (12) of August, A. D. 1871), by authority granted in the charter of the Laclede and Fort Scott Railroad Company, approved January 11th, 1860. In testimony whereof the said county of Dallas has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing hereto the seal of said court. This done at the office of said clerk of said court this 28th day of December, 1871.

(DALLAS CO., MO., SEAL OF)
(THE COUNTY COURT.)

J. R. GAMMON,
Presiding Justice County Court.

W. J. LOAFMAN,
Clerk County Court.

And the plaintiff further states that he became the holder and bearer of the coupons for interest on said bonds filed with his petition bona fidely for value, without notice or information of any fraud, irregularity, or informality in the issue of said bonds, if there was any, and prays judgment, as he has by his petition prayed.

THOMAS C. FLETCHER,
Att'y for Plaintiff.

And afterwards, at a regular stated term of said circuit court begun and held on the third Monday of April, 1878, at Jefferson city, in said district, the following proceedings were had on the 18th day of April, A. D. 1878, to wit:

JOHN W. McKENZIE)
vs.) 944.
DALLAS COUNTY.)

45 This day come the parties, by their attorneys, the plaintiff by Thomas C. Fletcher, esq., and the defendant by John P. Ellis, esq., and thereupon a stipulation waiving a jury, and also a stipulation as-

to facts, is filed, and this case being regularly called for trial, the same is submitted to the court upon the pleadings and proofs.

And said stipulation waiving a jury herein, and stipulation as to facts filed herein, is in words and figures as follows, to wit:

Jury waiver and stipulation as to facts.

In the United States circuit court for the western district of Mo.

JOHN W. McKENZIE)
vs.
DALLAS COUNTY.)

Now come the parties herein, by their respective attorneys, and stipulate that the following facts and proofs, subject to all objections for irrelevancy and incompetency, are the evidence at the trial of the above cause.

1st. The copy of the bond hereto attached, marked "A," is a true copy of each bond of the issue of $85,000 involved in this suit, except the number thereof, which number run from 1 to 85.

2d. That said $85,000.00 of bonds are issued according to their import in pursuance of the following orders, marked "B," "C," and "D."

3d. That plaintiff is the bona fide holder for value of the coupons sued on, and is a citizen of the State of New York.

4th. That previous to the order dated May 18th, 1871, the county of Dallas had subscribed to the capital stock of the Laclede and Ft. Scott Railroad Company $150,000.00, and had issued its bonds in payment thereof, which then were a subsisting indebtedness.

5th. That at the said date, to wit, May 18th, 1871, the last annual assessment of the said county of Dallas was $1,461,545.00.

That no vote of the tax-payers, citizens, or people of Dallas County was ever had or held to authorize the subscription of $85,000.00 to the capital stock of said R. R. Co., nor was the proposition to so subscribe ever submitted to a vote of the tax-payers, citizens, or people of Dallas County.

And it is stipulated that the objection to the validity of said
46 bonds on account of the want of the vote last above mentioned may be considered on the trial of this case the same as though set up in defendant's answer.

7th. That the act of incorporation hereto attached, marked "E," is the act referred to in plaintiff's petition and in the bonds.

8th. That a trial by jury is waived in this cause.

THO. C. FLETCHER,
Att'y for Pl'ff.
JOHN P. ELLIS,
Att'y for Dallas Co.

Exhibit B referred to in said stipulation is the order of May 16th, 1871, hereafter copied in full on page 57 of this transcript. Exhibit C referred to is the order of June 19th, 1871, hereafter copied on page 62 of this transcript. Exhibit D is the order of Aug. 7th, 1871, hereafter copied on page 64 of this transcript.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday of November, 1878, the following further proceedings were had on the 22d day of November, 1878, to wit:

JOHN W. McKENZIE
vs. } 944, 259.
DALLAS COUNTY.

This cause having been heretofore submitted to the court upon the pleadings and proofs and taken under advisement, upon consideration of the premises, and being fully advised concerning the same, the court doth find that the defendant is indebted to the plaintiff by reason of the matters alleged in the petitions herein in the sum of five thousand nine hundred and thirty-three dollars and sixty-seven cents ($5,933.67).

Judgment.

It is therefore considered by the court that the plaintiff, John W. McKenzie, recover against the defendant, the County of Dallas, in the State of Missouri, the sum of five thousand nine hundred and thirty-three dollars and sixty-seven cents ($5,933.67), so found to be due, with his costs herein expended, and have thereof execution.

Defendant files motion for new trial.

Said motion so filed as aforesaid is in words and figures following, to wit:

Motion for new trial.

JOHN W. McKENZIE
vs. } Page 15. No. 944, 259.
DALLAS COUNTY.

Now, at this time, comes the defendant, and moves the court to set aside the finding and judgment of the court in the above-entitled cause
47 for the following reasons, to wit: Because the finding of the court is against the facts and law of the case; because the court erred in rendering judgment for the plaintiff, and should have been for the defendant.

JOHN P. ELLIS,
Att'y for Def't,
By JEFF. CHANDLER.

And afterwards, at said last-named term of said circuit court, the following further proceedings were had on the 29th day of November, 1878, viz:

JOHN W. McKENZIE
vs. } 944.
DALLAS COUNTY.

This day a stipulation of counsel for the filing of a motion for a new trial herein [is filed].

Said stipulation so filed is in the words and figures following, to wit:

Stipulation.

McKENZIE)
vs.
DALLAS CO.)

ST. LOUIS, *Nov. 27th*, 1878.

It is hereby stipulated in the above cause, now pending in the U. S. circuit court for the western dist. of Mo., that motion for new trial and in arrest may be filed without prejudice at any time during the present term of said court by said defendant.

THO. C. FLETCHER,
Att'y for Pl'ff.
JOHN P. ELLIS,
Att'y for Def't.

And afterwards, at a regular stated term of the circuit court of the United States in and for the eastern division of the western district of Missouri, begun and holden at Jefferson City, in said district, on the third Monday, the 17th day, of November, A. D. 1879, the following further proceedings were had on the 18th November, 1879, to wit:

JOHN W. McKENZIE)
vs. } 944.
DALLAS COUNTY.)

This day comes the plaintiff, by Joseph Shippen, esq., and submits the motion for a new trial heretofore filed herein on his part.

And afterwards, on the 7th day of July, A. D. 1880, at an adjourned day of the regular stated term of said circuit court, begun and held on the third Monday of April, A. D. 1880, the following further proceedings were had in said case, to wit:

48 JOHN W. MACKENZIE)
vs. } 944.
DALLAS COUNTY.)

Motion for new trial overruled.

The motion for new trial having been submitted to the court, on consideration whereof it is ordered that said motion be overruled.

Appeal bond filed.

Thereupon there is presented to the court a bill of exceptions in the above cause, a writ of error to reverse the judgment herein, a citation directed to the said plaintiff, and an appeal bond in the sum of $500.00; whereupon said bill of exceptions is signed, said writ allowed, and bond approved and ordered to be made part of the record herein.

And said bill of exceptions so filed is in words and figures as follows, to wit:

Bill of exceptions

In the circuit court of the United States for the eastern division of the western district of Missouri, at Jefferson City, Missouri.

McKinzie)
vs.
Dallis County.)

Be it remembered, on the day of , 187 , being the day of the term of said court, the above-entitled cause coming on to be heard before the court, a jury having been waived, the following proceedings were had:

The plaintiff offered in evidence the stipulation of the parties herein filed April 18th, 1878, in words and figures following, to wit:

Stipulation.

In the United States circuit court for the western district of Mo.

John W. Mackenzie)
vs.
Dallas County.)

Now come the parties herein, by their respective attorneys, and stipulate that the following facts and proofs, subject to all objections for irrelevancy and incompetency, are the evidence at the trial of the above cause.

1st. The copy of bond hereto attached, marked "A," is a true copy of each bond of the issue of $85,000 involved in this suit, except the numbers thereof, which numbers run from 1 to 85.

2d. That said $85,000.00 of bonds were issued, according to their import, in pursuance of the following orders, marked "B," "C," and "D."

49 3d. That plaintiff is the bona fide holder for value of the coupons sued on, and is a citizen of the State of New York.

4th. That previous to the order dated May 18th, 1871, the county of Dallas had subscribed to the capital stock of the Laclede and Ft. Scott Railroad Company $150,000.00, and had issued its bonds in payment thereof, which then were a subsisting indebtedness.

5th. That at the said date, to wit, May 18th, 1871, the last annual assessment of the county of Dallas was $1,461,545.00.

That no vote of the tax-payers, citizens, or people of Dallas County was ever had or held to authorize the subscription of $85,000.00 to the capital stock of said R. R. Co., nor was the proposition to subscribe ever submitted to a vote of the tax-payers, citizens, or people of Dallas County.

And it is stipulated that the objection to the validity of said bonds on account of the want of the vote last above mentioned may be considered on the trial of this case the same as though set up in defendant's answer.

7th. That the act of incorporation hereto attached, marked "E," is the act referred to in plaintiff's petition and in the bonds.

8th. That a trial by jury is waived in this cause.

THO. C. FLETCHER,
Att'y for Pl'ff.
JOHN P. ELLIS,
Att'y for Dallas Co.

The plaintiff then read in evidence an act of the general assembly of the State of Missouri entitled "An act to incorporate the Laclede & Fort Scott Railroad Company," approved February 11, 1860, as published in the acts of the general assembly of the State of Missouri, 1859–'60, page 434.

Said act is in words and figures following, to wit:

Charter of the Laclede & Ft. Scott R. R. Co.

Act of incorporation of the Laclede & Ft. Scott Railroad Company.

Be it enacted by the general assembly of the State of Missouri, as follows:

SECTION 1. That a company is hereby incorporated to be called the Laclede and Fort Scott Railroad Company, the capital stock of which shall be six millions of dollars, to be divided into shares of one hundred dollars each, the holder whereof, their successors or assigns, shall constitute
50 and be a body politic and corporate in law and in fact, by the name and style aforesaid, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended against; may make and use a common seal, and break and change the same, and shall be able in law and equity to make contracts; may make, hold, use, possess, and enjoy the fee-simple or other title in and to any real estate, and may sell and dispose of the same; may make by-laws, rules, and regulations proper for carrying into effect the provisions of this act not repugnant to the Constitution or laws of the United States or of this State, and shall have the usual and necessary powers of corporations for such purposes.

SEC. 2. That Rufus S. Philips and A. S. Cherry, of the county of Laclede; I. U. Morrow and Dr. E. Hovey, of the county of Dallas; William M. Giggs and John T. Snyder, of the county of Polk; Horace B. Lindsay and Henry Cravens, of the county of Cedar; J. N. B. Dodson and James H. Blanton, of the county of Vernon; George E. Ward, of the county of Barton; and George A. Crawford, of Kansas Territory, or any seven of them, shall constitute the first board of directors under this act, and shall hold their offices until their successors are elected and qualified. They shall meet at such time and place as may be designated by any three of them above named, and organize themselves into a board of directors, and when organized shall cause books to be opened for the subscription of capital stock of said company, and at such times and places as they may designate, under the supervision of such persons as they may appoint, and continue them open so long as they may deem proper, and may reopen such books when deemed necessary, until the whole stock shall have been subscribed.

SEC. 3. So soon as ten shares shall have been subscribed, the directors shall cause an election to be held, for the election of seven directors, at such time and place as they may designate, giving four weeks' notice in some newspaper published in a county through which the route of the contemplated road will be located.

SEC. 4. An election of seven directors shall be held on the third
51 Monday in June of each year, and if not held on that day an election shall be held at any other time the directors may designate.

The election shall be held under the supervision of one or more stockholders, and the person receiving the highest number of votes shall be elected, and shall continue in office until his successors are duly elected and qualified. Every stockholder shall be entitled to one vote for every share of stock held by him, and may vote by proxy. Within sixty days after their election the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director, and until his successor shall be qualified.

SEC. 5. The directors may appoint agents, clerks, engineers, superintendents, and other officers and servants for said company, and shall keep a journal of their proceedings, and shall cause correct books and accounts to be kept. They may determine by by-laws what number of directors shall constitute a quorum, and may appoint committees, and fill vacancies in office under said company. They may fix the salary of the president and the officers, agents, and directors, but no director shall receive compensation as such exceeding one dollar and fifty cents per day while the board is in session, and ten cents per mile for traveling from his place of abode to the place of meeting of the board of directors, and the same mileage for his return; they may take securities from the officers and agents and may adopt such other measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper; and if any stockholder shall fail to pay any such requisition within ten days after the time appointed, the said company may recover the same with interest, and if not collected, may declare the stock forfeited and sell the same. No delinquent stockholder shall vote in said company.

SEC. 7. Said company shall have full power to survey, work,
52 locate, construct, maintain, and operate a railroad, commencing at some point in Laclede County, by the most direct and practicable route through the counties of Laclede, Dallas, Polk, Cedar, and Vernon, in the direction of Fort Scott, in Kansas Territory, and for that purpose may hold a strip of land not exceeding a hundred feet in width, with as many tracks as the president and directors may deem necessary; provided, that in passing hills or valleys the said company are authorized to extend such width so far as may be necessary to effect such object; and may also hold sufficient land for the erection of depots, work-houses, shops, and water-stations, and may select such route as may be deemed most advantageous and may extend branch railroads to any point in any of the counties through which the said railroad may be located.

SEC. 8. Said company may take voluntary relinquishments of the right of way for said railroad and the necessary depots, shops, and stations, and if the lands through which said road shall pass shall belong to minors, in whole and in part, the guardian or curator of said minor shall have power to convey to such company so much of the land as may be necessary for the purposes aforesaid, on fair and equitable terms, but every such conveyance by guardian shall be subject to the approval or rejection of the county court in which such guardianship is pending.

SEC. 9. If any owner of any tract of land through which said railroad shall pass shall refuse to relinquish the right of way for said road to said company or the necessary lands for depots, engine or warehouses, water-

stations or turnouts, or if the owners be infants or persons of unsound mind, or non-residents of the State, the facts of the case shall be specially stated to the judge of the circuit court of the county in which such lands are situated, and said judge shall thereupon appoint three disinterested citizens of said county to view such lands, who shall take into consideration the value of the land and advantages or disadvantages of the road to the same, and shall report, under oath, what damages will be done
53 the said lands or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned. Notice of such application to such judge shall be given to the owners of such lands five days before such application shall be made, if such owner reside in this State, or to his guardian, and is such owner be a non-resident of this State, he may be served with actual notice or by an advertisement for four weeks in some public newspaper.

SEC. 10. The persons appointed to view and value such lands shall file their report and plat in the office of the clerk of the circuit court of the county in which the land, or a greater part thereof, is situated, and if no valid objection is made to said report, the court shall render verdict in favor of such owner against said company for the amount of damages assessed, and shall make an order vesting in said company the fee-simple title of the land in such report and plat described. Objections to such report must be filed within ten days after the same is filed, which objections shall be examined by said judge in term time or vacation, and he may hear testimony, and by judgment confirm said report; or he may set the same aside, and appoint three other viewers who shall proceed in the same manner and make their report, until a report is conformed; provided, in order that the progress of the work may not be impeded, that after said viewers have filed their report and plat in the office aforesaid, the company, after having made a tender of the amount of damages to the person or persons entitled to the same make a deposit of the amount with the clerk of the said circuit court, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arizen. In all such cases the court shall adjudge the costs of the proceeding according to equity, and the court shall have the power to make such orders and take such other steps as will promote the ends of justice between the owners of such lands and said company; and the said viewers shall be entitled to the same fees as are allowed to commissioners in partition under the statutes.

SEC. 11. Said company may build said road along or across any
54 State or county road, or street, or alley, or wall of any town or city, or over any stream or highway, but whenever said railroad shall cross any State or county road, or any street or alley, said company shall keep good and sufficient causeways or other adequate facilities for crossing the same, and said railroad shall not be so constructed as to prevent the public from using any street, road, or highway along or across which it may pass, and when said railroad shall be built across any navigable stream said company shall erect a bridge sufficiently high on which to cross, or shall construct a draw-bridge, so that in no case shall the free navigation of such stream be obstructed. Whenever any person shall own land on both sides of said road, said company, when required so to do, shall make and keep in good repair one good causeway or other adequate means of crossing the same.

SEC. 12. Said company shall commence the construction of said road within ten years, and shall complete the same within fifteen years after its commencement, and said company shall have general power to use, manage, control, and enjoy said road; shall determine the kind of carriages and engines that shall be used thereon, and by whom and in what manner; and shall determine the terms, conditions, and manner in which merchandise, property, and passengers shall be transported thereon; and shall have power to fix the width of the track of said road between the rails as may enable them to make suitable connections with other railroads, any law to the contrary notwithstanding; and also shall have power to construct and keep such turnouts, gates, culverts, toll-houses, depots, warehouses, causeways, and other buildings, machinery, and fixtures as may be necessary. Said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up at their depots estimates of the tolls and freights charged.

SEC. 13. Dividends of so much of the profits of said company as shall appear advisable to the directors shall be declared semi-annually, and be paid to stockholders or their legal representatives on application at the office of said company, at any time after the expiration of ten days from the time of declaring the same; but the directors may reserve or set apart a portion of the profits as a contingent fund to meet expenditures and losses.

SEC. 14. It shall be lawful for the county court of any county in the State to subscribe to the stock of said company, or invest its three per cent. fund or any other internal-improvement fund belonging to the county, as stock in said road; and for the stock subscribed in behalf of the county may issue the bonds of the county to raise the funds to pay for the same, and to take proper steps to protect the interests of the county; may appoint an agent to represent the county, vote for it, and receive its dividends; any incorporated city, town, or company may subscribe to the stock in said railroad company, and appoint an agent to represent its interests, give its vote and receive dividends, and take proper steps to guard and protect the interests of the said city, town, or company.

SEC. 15. Said company shall have power to construct, extend, maintain and operate their railroad, and its branches, beyond the limits of the State, and through any county of the State, and are hereby authorized to make contracts for the same, and shall have power to contract for and construct all necessary bridges over streams on the line of said road or its branches.

SEC. 16. At every annual meeting of the company the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-fifth part of the stockholders may call a meeting of the company by giving four weeks' notice in two newspapers.

SEC. 17. When the road or any branch thereof is completed the company shall file a plat thereof in the office of the secretary of state; and the legislature may at any time require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company; and the books and accounts of the company may at any time be investigated by a committee appointed by the general assembly.

SEC. 18. If any person shall wilfully injure, obstruct, or destroy said railroad or deface any work, edifice, fixture, or improvement or other property belonging to said company, he or she shall be guilty of a criminal

offense, and be punished in such manner as shall be prescribed by law, and shall be liable to said company for all damages by it sustained.

56 SEC. 19. When any person shall cease to be a stockholder he shall cease to be a member of the company. The operations of said company shall be confined to the general business of locating, constructing, maintaining, managing and using said railroad, and the acts proper to carry the same into complete and successful operation.

SEC. 20. The stock of said company shall be considered personal property, and shall be assignable and transferable according to such rules and regulations as the board of directors shall from time to time make and establish, subject, however, to the laws of the State, as the same may exist or may hereafter be changed. In case it shall appear at any time that an election of directors should not be made on any day when, pursuant to this act or any regulation of said company, it ought to have been made, the said company shall not for that cause be dissolved; but it will be lawful on any other day to make out and hold an election for a board of directors in such manner as shall be regulated by the by-laws and ordinances of said company.

SEC. 21. Said company shall have power to receive and hold loans, gifts, grants and donations of lands, money, or bonds, in any quantity from any county, State, or Government, or from any Indian tribe; it shall have power to hold mortgages on real and personal property to any extent, and to sell, convey, pledge, loan, mortgage, or otherwise dispose of said lands, bonds, money, or other property, or any part thereof; and to sell, barter, loan, or pledge its own bonds, and apply the proceeds of the same to the construction of the road.

SEC. 22. None of the provisions of this act entitled "An act concerning corporations" shall apply to said Laclede and Fort Scott Railroad Company, except sections four, five, seventeen, and twenty-three, of said act. Each stockholder of the company shall be individually liable to the creditors of the company to an amount equal to the amount unpaid on the stock held by him for all the debts and liabilities of said company until the whole amount of the capital stock so held by him shall have been paid to the company; but no further liabilities shall attach to any stockholder in said company.

This act to take effect and be in force from and after its passage.

Approved, January 11th, 1860.

Then the plaintiff offered and read in evidence a copy of one of the bonds from which the coupons in suit were taken, refer'ed to in said

57 stipulations, as marked "A," in words and figures following:

Copy of Dallas Co. bond.

No. .] UNITED STATES OF AMERICA. [$1,000.

BOND OF THE COUNTY OF DALLAS, STATE OF MISSOURI.

Interest, ten per cent. per annum.

Know all men by these presents that the County of Dallas in the State, of Missouri, is indebted to the Laclede and Fort Scott Railroad Company,

or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said County of Dallas promises to pay at the German-American Bank, in the city of New York, fifteen years after date, with interest thereon at the rate of ten per cent. per annum, payable semi-annually at said bank on the first days of January & July in each year upon presentation and surrender of the annexed coupons as they severally become due and payable.

This bond is issued pursuant to an order of the county court of the county of Dallas, made on the eighteenth (18th) of May, A. D. 1871, (and amended on the nineteenth (19th) of June, A. D. 1871, and on the twelfth (12th) of August, A. D. 1871), by authority granted in the charter of the Laclede and Fort Scott Railroad Company, approved January 11th, 1860.

In testimony whereof the said County of Dallas has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and by the clerk of said court under the order thereof attesting the same, and affixing hereto the seal of said court. This done at the office of said clerk of said court this 28th day of December, 1871.

(SEAL OF THE COUNTY)
(COURT DALLAS CO., MO.)

J. R. GAMMON,
Presiding Justice County Court.
W. J. LOAFMAN,
Clerk County Court.

Then the plaintiff offered in evidence the certified copy purporting to be an order of the county court of Dallas County at an adjourned term thereof, dated the 16th day of May, 1871, in words and figures following, to wit:

Copy of order of co. c't, May 16th, 1871.

Be it remembered that at an adjourned term of the county court in and for the county of Dallas and State of Missouri, began and held at the court-house in the town of Buffalo on Tuesday the 16th day of May, 1871, there being present J. R. Gammon, W. K. Jump, and Nathan White, justices of said court, and John O. Bannon, sheriff, and W. J. Loafman, clerk
58 of said court, when and where the following proceedings were had and orders made:

3D DAY.

In the county court of Dallas County and State of Missouri, May term, A. D. 1871.

In the matter of the Laclede and Fort Scott Railroad Company, a corporation for railroad purposes duly organized and existing under and by virtue of an act of the general assembly of this State entitled "An act of incorporation of the Laclede and Fort Scott Railroad Company," approved January 11th, 1860.

It having been satisfactorily shown to this court by proper estimates that a further subscription to the capital stock of said company of the sum of eighty-five thousand dollars is necessary to complete the grading, masonry, and bridging of said road-bed so as to have the same ready for the

ties within the limits of Dallas County, and it further appearing by the request of numerous tax-payers of said county that a further subscription to the said capital stock of said Laclede and Fort Scott Railroad Company is recommended:

It is therefore ordered by this court that the county of Dallas, in the State of Missouri, subscribe to the capital stock of said railroad company the sum of eighty-five thousand dollars as an additional subscription to that heretofore made, and that said sum is hereby so subscribed subject to the following conditions and reservations, to wit:

1st. That the bonds of Dallas County be issued in payment of the aforesaid subscription of the denomination of one thousand dollars each, to run fifteen years, and to bear interest at the rate of ten per cent. per annum, payable semi-annually, on the first day of January and July in each year, and the said bonds and the coupons attached thereto shall designate when each is made payable, and the amount thereof. The body of the bonds shall be signed by the presiding justice of the county court of said county and be attested by the county clerk and seal of said court, and each coupon shall bear the autograph of said presiding justice and county clerk neatly printed or stereotyped thereon.

2d. Said bonds shall not be signed nor delivered until this court has satisfactory evidence that the county of Laclede has made ample provisions for the completion of the road bed in said Laclede County, nor until some able and reliable company shall have agreed and bound itself to equip said road; that is, tie, iron, and put on the necessary rolling stock; nor until all contracts made by the said railroad company with the present contractor, to wit, Edward Burgess, be annulled and finally terminated and set aside, so far as the work in Dallas County is concerned.

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3d. That there shall be a financial agent appointed by this court who shall act for and in behalf of Dallas County, whose duty it shall be to take specimen bonds to the Eastern markets with which to negotiate the whole amount thereof; but said financial agent shall, before consum'ating the final sale of said bonds, confer with the county court or a committee of competent persons appointed by the court, touching the matter, and obtain their consent to make said sale. When the same are sold, he shall place them in a good reliable bank or banks in the city of Saint Louis, Missouri, and return the bank's certificate of said deposits to the purchaser of said bonds, and procure the deposit of the money in said bank or banks in lieu of said bonds, procuring the highest rate of interest possible upon said deposit. Upon receipt of each monthly estimate of the chief engineer of the amount of work actually done on the now unfinished part of the road-bed in said county of Dallas, the county agent shall, between fifteenth and twentieth days of each month, pay, or cause to be paid, first, the bills (properly signed by the contractor) of the work-hands on the road; second, the bills or orders, likewise properly signed as above, for supplies furnished; third, the amount due the subcontractors (if there be any subcontractors); fourth, the remainder of said estimate, if there be any remainder, shall be paid to the chief contractor or contractors.

It is further ordered that the county agent shall pay all engineering expenses incurred within the county of Dallas, as per bills rendered by the assistant or principal assistant engineer and approved by the chief engineer and local director. Upon the payment of each monthly estimate

and engineering expenses as above specified the county agent shall procure from the railroad company certificates of stock for the county of Dallas to the full amount of such monthly payments. Said county agent
60 shall, before entering upon his duties and office as such agent, execute a bond to the said county of Dallas in double the amount of money or bonds that may come into his hands at any one time conditioned for the faithful performance of his duties as such agent, to be approved by this court and filed with the clerk thereof; and the said county agent shall be paid by the said county for negotiating said bonds and disbursing said money a reasonable compensation in addition to travelling and other necessary expenses.

4th. That no misunderstanding may arise in relation to the true intent and meaning of this order, it is hereby expressly stipulated and provided that Dallas County shall hold the sole interest in and control of the said bonds, as also the money arising from their negotiation, until it is paid out by the agent of the said county for the purposes and in the manner heretofore provided; and further, that this subscription is conditioned, as in the former subscription, to wit, that the freight and passenger depots be established and kept up within one-half mile of the court-house in said Dallas County.

5th. The county of Dallas also reserves the right of employing a competent engineer to inspect, measure, and render estimates of the whole or any part of the work done on said road in said Dallas County, and such estimates shall take precedence of any other measurements or estimates made by whomsoever; and further, the right is hereby reserved to the said Dallas County, if this court so elect, to let or relet any or all of the work remaining to be done on said road in said Dallas County, and to enter into contract therefor, and to finish up said road-bed in accordance with the general plan of construction prescribed by the said railroad company.

6th. And, finally, unless this court, or the clerk in vacation thereof, be notified, in writing, by said railroad company of the acceptance of this proposition, with all and singular its conditions and reservations, and said notice is not received on or before the 31st day of December, A. D. 1871, it shall be null and void and of no binding effect in law or equity, and without damage to Dallas County.

61 Judge Nathan White, one of the justices of the county court of Dallas County, in the State of Missouri, entered his protest and dissent to the above and foregoing order in the following words, to wit:

"I feel that it would be doing injustice to myself did I not enter upon the record my dissent and protest to the above action of the court, in a matter of the magnitude of the above, not only as to the amount involved but to the general interest of the community. I do not feel that the court, acting as ministerial officers, should act without first ascertaining the will of the people. I do not wish to impose my peculiar views upon the court as to the propriety or impropriety of the action of the majority; but certainly it does appear to me that in a matter of this kind, so directly affecting the most substantial interest of the people wherein their financial weal or woe is so directly involved, and involving considerations of the most important as well as of the most complex character, far beyond my ability to fathom, and in which the intelligence and capital affected by the action is so much divided, it behooves this court to pause and well consider be-

fore they take action. We who compose this court, chosen from among the people to transact such ordinary business as is liable to come before it, are not so far superior to the majority of our fellow-citizens in financial skill and ability (especially when a large majority have already entered their protest to the proposed action of the court) as to set that protest at defiance and act directly contrary thereto; but it certainly well behooves us to gain all the light we can in the matter in hand, and heed, as I feel we are morally bound to do, the voice of the people, and afford them an opportunity to legally and regularly express their will. A discussion pro and con before the people could not fail to give light upon the subject, and the interest involved would insure impartial hearing, and I, for my part, am unwilling to make any order without their consent."

Ordered that court adjourn until court in course.

STATE OF MISSOURI,
County of Dallas, ss:

62 I, T. B. Morrow, clerk of the county court in and for said county, hereby certify that the above is a true copy of the original order, together with opening & closing orders of court, as the same appears of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in Buffalo, this 14th day of April, 1873.

[SEAL.] T. B. MORROW, *Clerk.*

(To the introduction of which the defendant, under the rights reserved in said stipulation, objected, because—

1. It is not an order referred to in the bond.
2. It is not evidence of a lawful session or act of the county court.
3. There is no order of said court in evidence showing how this was an adjourned term.
4. It is irrelevant and incompetent, and according to its terms did not authorize the issue of the bonds in controversy.

Which objections were by the court overruled, and the same was read in evidence, to which ruling the defendant at the time excepted.)

Then the plaintiff offered in evidence the certified copy purporting to be an order of the county court of Dallas County, at special term, dated June 19th, 1871, in words and figures following, to wit:

Copy of order of co. c't, June 19th, 1871.

Be it remembered that at a special term of the county court of Dallas County, in the State of Missouri, called by the presiding justice of said court, for the purpose of instructing the agent of said county, to the Laclede and Fort Scott Railroad Company, how to vote for the election of directors to said railroad company at an election to be held at Lebanon, Mo., on the 19th day of June, 1871, also to make changes in railroad order made at the May term of this court, begun and held at the court-house in Buffalo, on the 19th day of June, 1871—

There was present, J. R. Gammon, Nathan White, and W. K. Jump, justices of said court, John O'Bannon, sheriff, and W. J. Loafman, clerk of said court, when and where the following proceedings were had and orders made:

In the matter of additional subscription to the capital stock of the Laclede and Fort Scott Railroad Company, made at the May term, A. D. 1871, of this court.

It is ordered that the last clause of section 1 of said order be
63 stricken out and the words "and the coupons thereof" be introduced, so that said clause shall read as follows: "The body of the bonds and the coupons thereof shall be signed by the presiding justice of the county court of said county, and be attested by the county clerk and seal of said court."

2. It is ordered that the second clause of section 3 be amended so as to read: "upon the receipt of each monthly estimate of the chief engineer, countersigned by the president of the said company, of the amount of work actually done"—the words "countersigned by the president of said company" being introduced.

3. Section 3 and paragraph 3 is hereby amended so as to read: "It is further ordered that the county agent shall pay all engineering expenses incurred within the county of Dallas, as per bill rendered by the chief engineer and approved by the president and local director of said company."

4. Paragraph 4 of section 3 is hereby amended so as to read as follows: "Upon the payment of each monthly estimate and engineering expenses, as above specified, the county agent shall procure from the railroad company certificates of stock for the county of Dallas to the full amount of such monthly payments, together with an additional amount equaling the percentage of discount on the county bonds sold, that is to say, for the eighty-five thousand dollars subscribed the county of Dallas shall have eighty-five thousand dollars of stock in said railroad company."

5. It is likewise ordered that section 5 be amended so as to read as follows: "The county of Dallas also reserves the right to employ a competent engineer to inspect, measure, and render estimates of the whole or any part of the work done on said road in said Dallas County, and if any disagreement arise between the chief engineer of the company and said engineer of the county, then reference shall be had to a third and disinterested engineer, chosen by said county and company engineers, whose decision shall be final; provided, further, that in case the work in Dallas County is not completed within the time specified in the contract, made by the Laclede and Fort Scott Railroad Company, then it shall be competent for said Dallas County to provide for the completion of said work."

1ST DAY.

Ordered that court adjourn until court in course.

64 STATE OF MISSOURI,
County of Dallas, ss:

I, T. B. Morrow, clerk of the county court in and for said county, hereby certify that the above is a true copy of the original order, together with opening & closing orders of court, as the same appears of record in my office.

Witness my hand as clerk, and the seal of said court. Done at office in Buffalo, this 14th day of April, 1873.

[SEAL.] T. B. MORROW, *Clerk.*

(To the introduction of which the defendant objected, because—

1. It does not purport to be an order referred to in the bond.

2. It is not evidence of a lawful session or act of the county court.

3. The facts made necessary by the laws of Missouri to authorize a county court to hold a special term do nowhere appear.

4. It is irrelevant, incompetent, and according to its terms did not authorize the issue of the bonds in question.

Which objections were by the court overruled, & same was read; to which ruling the defendants at that time excepted.)

Then the plaintiff offered in evidence the certified copy purporting to be an order of the county court of Dallas County, dated 7th day of August, 1871, in words and figures following, to wit:

Copy of order co. c't, Aug. 7, 1871.

Be it remembered that at a regular term of the county court of the county of Dallas and State of Missouri, begun and held at the court-house, in the town of Buffalo, in said county and State, on this 7th day of August, A. D. 1871, there was present J. R. Gammon, Nathan White, and W. K. Jump, justices of said court, John O'Bannon, and W. J. Loafman, clerk of said court, when and where the following orders were made and proceedings had:

Whereas a contract was lately entered into between the Laclede and Fort Scott Railroad Company of the first part, and General George A. Fitch and associates of the second part, requiring that the bonds provided for in the last order of the Dallas County court shall be promptly signed up and placed in the hands of a trustee or trustees, to be agreed upon by the two parties, before work shall commence:

It is ordered that said order is hereby changed so that said bonds
65 shall at once be lithographed, signed, and placed in the hands of said trustee or trustees.

It is further ordered that the county agent shall proceed at once to have said bonds lithographed, and return them to the presiding justice of the Dallas County court for his signature and that of the countyclerk of said county.

It is further ordered that the financial agent of Dallas County is hereby instructed to procure as early as possible a settlement between the Laclede and Fort Scott Railroad Company and Edward Burgess, so far as the work of the said Edward Burgess in Dallas County is concerned, so that the excess which, as shown in the estimates of Chief Engineer Parker, *which* has been paid to the said Edward Burgess shall be refunded to the county; but it is expressly stipulated and provided that the bonds to be issued shall not pass from the hands of this court to those of a trustee until such time as it shall appear to their satisfaction that a proper guarantee shall have been given by the party of the second part for the faithful performance of their obligations, as specified in the contract above alluded to.

Ordered that court adjourn until court in course.

STATE OF MISSOURI,
County of Dallas, ss:

I, T. B. Morrow, clerk of the county court in and for said county, here-

by certify that the above is a true copy of the original order, together with opening and closing orders of court, as the same appears of record in my office.

Witness my hand as clerk, and the seal of said court. Done at office in Buffalo this 14th day of April, 1873.

[SEAL.] T. B. MORROW, *Clerk.*

(To the introduction of which the defendants objected because, it was irrelevant, incompetent, indefinite, did not authorize the issue of the bonds in question nor identify them; it does not purport to be sufficient in itself. Which objections were by the court overruled and same was read; to which ruling the defendant at the time excepted.)

Then the plaintiff offered in evidence all the coupons sued on and
66 described in the petition, each coupon thereof, except as to the number and date of maturity, being in words & figures following, viz:

Copy of coupon to Dallas Co. bond.

$50.] BUFFALO, DALLAS COUNTY, MISSOURI.

The County of Dallas, State of Missouri, will pay to bearer, at the German-American Bank in the city of New York on the first day of 187 , fifty dollars, being the semi-annual interest due on bond No. .

J. R. GAMMON,
Presiding Justice County Court.

W. J. LOAFMAN,
Clerk of County Court.

(To the introduction of each and every one of said coupons the def't objected, because it had not been shown that the co. c't had power to issue them. Overruled, & def't excepted at the time.)

This being all the evidence in the case, the court, on the 22nd day of Nov., 1878, it being the fifth day of the November term of said circuit court, A. D. 1878, found the issues in favor of the plaintiff, and gave judgment in his favor for the sum of $5,933.67.

On the same day the defendant filed his motion for new trial in words and figures following, to wit:

Motion for new trial.

JOHN W. MCKENZIE } Page 15. No. 944, 259.
vs.
DALLAS COUNTY. }

Now at this time comes the defendant and moves the court to set aside the finding and judgment of the court in the above-entitled cause for the following reasons, to wit: Because finding of the court is against the facts and law of the case; because the court erred in rendering judgment for the plaintiff, and should have been for the defendant.

JOHN P. ELLIS,
Att'y for Def't.
By JEFF. CHANDLER.

Which motion was by the court afterwards, on the 7th day of July, 1880, being the 13th day of the April term, A. D. 1880, of said circuit court, overruled; to which ruling the defendant at the time excepted, and asks that this his bill of exceptions be signed, sealed, and made part of this record in this cause, which is accordingly done.

(Signed) A. KREKEL, [SEAL.]
Judge Circuit Court in Eastern Division
Western District of Missouri.

67 Correct:

THO. C. FLETCHER, *Att'y for Pl'ff.*
J. P. ELLIS, " " *Def't.*

And the said appeal bond so filed as aforesaid on the 7th day of July, 1880, is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, The County of Dallas, in the State of Missouri, as principal, and E. M. Padget and Frank Furth as sureties, are held and firmly bound unto John W. McKenzie in the full and just sum of five hundred dollars, to be paid to the said John W. McKenzie, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at the November term, A. D. 1878, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between John W. McKenzie, plaintiff, and The County of Dallas, in the State of Missouri, defendant, judgment was rendered against the said County of Dallas, defendant aforesaid, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John W. McKenzie citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now the condition of the above obligation is such that if the said County of Dallas shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

DALLAS COUNTY, MO.,
By GEO. T. EDMISSON, [SEAL.]
Co. Court Clk.
E. M. PADGET. [SEAL.]
FRANK FURTH. [SEAL.]

Approved by—
(Signed) A. KREKEL, *Judge.*

68 UNITED STATES OF AMERICA,
Western District of Mo., set:

Before me, George T. Edmisson, cl'k of the county court of Dallas County, personally appeared E. M. Padgett, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of five hundred dollars, and that he owns real property to that amount subject to execution in Dallas County, in the State of Mo.

E. M. PADGET.

Subscribed and sworn to before me this 23d day of June, 1880.
[SEAL.] GEO. T. EDMISSON,
Clerk County Court, Dallas County, Mo.

UNITED STATES OF AMERICA,
Western District of Mo., set:

Before me, George T. Edmisson, clerk of the county court of Dallas County, Mo., personally appeared Frank Furth, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of five hundred dollars, and that he owns real property to that amount subject to execution in Dallas County, in the State of Mo.

FRANK FURTH.

Subscribed and sworn to before me this 23d day of June, 1880.
[SEAL.] GEO. T. EDMISSON,
Clerk County Court, Dallas County, Mo.

69 And the opinion of the court, delivered in this case on said 22d day of November, 1878, is in words and figures as follows:

Opinion.

JOHN W. MCKENZIE *vs.* DALLAS COUNTY. } 200, 259, & 944.

The bonds, on detached coupons of which this suit is brought, differ in nothing from former bonds sued on in this court except that they are an additional issue of 85,000 dollars. There are no questions raised in this case not determined in former suits, except that the 85,000 added to the former issue of 150,000 dollars is claimed to be an overissue, it being admitted that at the time of the issuing of the bonds the assessment of Dallas County was 1,461,545 dollars.

The additional subscription was made after the act of 10th March, 1871, of the general assembly of the State of Mo.

This act limited the power of the county court to subscribe to the capital stock of railroad companies to not exceeding 10 per cent. of the last annual assessment of the county.

The question here involved came before the Supreme Court of the United States, in the case of Marcy vs. The Town of Oswego, 2d Otto, 637, and it was there held that "the existence of sufficient taxable property to warrant the amount of the subscription and issue was no more essential to the exercise of the authority conferred upon the board of county commissioners than was the petition for the election, or the fact that fifty freeholders

had signed, or that then fifty of the legal voters had voted for the subscription. These are all extrinsic facts, bearing not so much upon the authority vested in the board to issue the bonds as upon the question whether that authority should be exercised. They are all by the statute referred to the inquiry and determination of the board, and they are all determined before the bonds and coupons came into the hands of the plaintiff.

70 He was therefore not bound when he purchased to look beyond the act of the legislature and the recitals which the bonds contained."

In this State, under the law, the county courts perform the functions and duties regarding railroad subscription of the board of commissioners.

The stipulation admits plaintiff to be a holder for value, and the judgment will be in his favor for the amount of coupons sued on.

71 UNITED STATES OF AMERICA,

Western District of Missouri, Eastern Division, set:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true transcript of the record and proceedings in case No. 944, of John W. McKenzie vs. Dallas County, as fully as the same remain of record and on file in my office.

Witness my hand as clerk, and the seal of said court. Done at office in the city of Jefferson this second day of October, 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) Case No. 944 (200–259). U. S. circuit court western district of Missouri, eastern division. John W. McKenzie vs. Dallas County. Duly certified copy of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 186. Dallas County, in the State of Missouri, plaintiff in error, vs. John W. McKenzie. W. Missouri, C. C. U. S. Filed 27th October, 1880.

110-686

IN THE

Supreme Court of the United States.

DALLAS COUNTY,
Plaintiff in Error,

vs

JOHN W. McKENZIE,
Defendant in Error.

No. 186.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

JOHN P. ELLIS,
Attorney for Plaintiff in Error.

Nixon-Jones Printing Co., Law Printers, 210 and 212 Pine Street, St. Louis.

IN THE

Supreme Court of the United States.

DALLAS COUNTY,
Plaintiff in Error,

vs.

JOHN W. McKENZIE,
Defendant in Error.

No. 186.

STATEMENT OF CASE BY PLAINTIFF.

This is an action brought on the matured coupons of certain municipal bonds of the County of Dallas in the State of Missouri. The defence presented the following facts: —

Previous to May 18, 1871, Dallas County had subscribed to the Laclede & Fort Scott Railroad Company $150,000, and issued its bonds therefor, which were on that date outstanding. On the preceding March, the General Assembly of the State of Missouri had passed an act prohibiting any county, city, town or township in the State from subscribing to the stock of any railroad company in the aggregate exceeding ten per cent of the last annual assessment within said county, city or township, which act was to take effect from and after its passage, to wit, March 10, 1871. (Laws of Missouri, Regular Session, 1871, page 51.)

BRIEF AND ARGUMENT.

I.

The act of 1871 prohibited the County Court of Dallas County from issuing the bonds in dispute.

It is true the power of the Railroad Company to receive subscriptions from municipalities is contained in a special charter, but within the provisions of this charter is contained a general law applicable to the entire State. The power to subscribe is in the following language: Sec. 14, "It shall be lawful for the county court of *any county in the State* to subscribe to the stock of said Company." This power is general, and for that reason may be controlled by a subsequent general law, which in the absence of vested rights may limit, change, or destroy the power given. Hence the act of 1871 does, by necessary implication, repeal or modify the general law contained in the charter of the Laclede & Fort Scott Railroad Company.

The power of the county to issue bonds, being limited to 10 per cent of its assessed values, had been exhausted by the first subscription. The second subscription was not only *ultra vires*, but also within the express prohibition of the statute. The right of the corporation to receive subscriptions from all the counties in the State, was by no means a surrender of legislative control over the municipalities of the State. The General Assembly still retained full and complete power over the county courts. This control and power were exercised in 1871 by the act referred to, and the authority to subscribe was expressly limited. This authority has been exceeded, and the terms of the statute violated; so, we say, the act of violation, to wit, the bond, must be void. There may be cases in which

judicial questions are submitted to a certain tribunal for ascertainment and determination, in which the action of such tribunal is conclusive as has been decided by this court in Marcy *v.* Township of Oswego, 92 U. S. 637, but, where the fact marking the boundary line of municipal power, is something so clear that it requires no judicial ascertainment to proclaim and fix it, the rule ought not to apply. To say, the figuring out ten per cent of $1,461,545 to be less than $150,000, is a question of such judicial quality and nicety, that the Legislature contemplated its submission only to a tribunal clothed with judicial functions, would be carrying the rule too far. There is no more discretion, or examination and decision required, in discovering this percentage, than there is in proclaiming the result of two plus two. We dispute the proposition that there was only one tribunal, or power in the State of Missouri qualified to pass upon this ten per cent question, it was a plain mark set by the Legislature, the ascertainment of which was committed to no particular officer.

II.

The bond in this case does not recite its authority in the usual terms. Municipal bonds generally say on their face that they are issued in pursuance of the orders of the county court. In the case at bar the bond recites that it was issued in pursuance of three certain orders describing them by date. The purchaser of the bond is directed by its terms, to these orders, to discover the power under which the bond professes to be executed. It was the duty of the purchaser to have read these orders, and he must be held bound by the authority, or the lack of it discovered by such orders. The first order of May 16th, 1871, purports to have been made at an adjourned term of the County Court of Dallas County. The terms of the county court are fixed by statute, adjourned terms are permitted, but the adjourned term must derive its validity from an adjourning order

entered at one of the regular terms named in the statute. In the absence of such adjoining order there can be no adjourned term. There is no evidence to show, nor does the order itself recite that, upon which the adjourned term must depend for its authority. The second order referred to in the bond as of the 19th day of June, 1871, was made at what the record calls a special term of the county court. The statute permits special terms to be ordered in the following manner: Sec. 1206, "The president or any two judges of the county court may order a special term whenever the business and interest of the county may require it."

Sec. 1207. "Notice of such special term shall be given to the judges who were absent when the same was ordered, and by advertisement placed up in five public places in the county at least five days before the commencement of such term." The notice here required is a statutory pre-requisite to the occurrence of a special term, and is a jurisdictional fact which ought to appear in the proceedings. The object of this notice is not simply to bring the judges together, but to notify the people of the county and give them an opportunity to be present. In the absence of the fact of notices there was no apparent authority for the holding of a special term, its proceedings were null and void, and the bond itself is notice of this fact, because the order is a part of the bond. The functions of county courts in Missouri have been well settled for many years by the adjudications of our own courts, those tribunals have no other powers than such as are especially conferred upon them by statute. They are in no such sense courts of general jurisdiction, nor should there be a presumption in favor of their proceedings, in the absence of the recital required by the express terms of the statute.

Valle *v.* Fleming, 19 Mo. 454;
Reardon *v.* St. Louis Co. 36 Mo. 553;
St. Louis *v.* Alexander, 23 Mo. 483;
Wolcott *v* Lawrence Co. 26 Mo. 272;
Steines *v.* Franklin Co. 48 Mo. 167.

It should affirmatively appear that the county court has jurisdiction of the subject-matter.

Jefferson Co. *v.* Cowan, 54 Mo. 234.

Any one dealing on the faith of the acts of the county court is bound to take notice of the limitation of its powers, and the elements of its authority.

Bauer *v.* Franklin Co. 51 Mo. 205.

The third order referred to in the bond as having been made on the 12th day of August, 1871, is in no way supported by the records, on the contrary it appears that on said date there was no county court held in Dallas County, and hence no order, and hence no authority for the issue of the bond. This recital in the bond is false, the fact that at other dates other orders were made on the bond question cannot help out a bond, which on its face is limited to certain orders by name, and by its terms derives no authority generally from the orders of the county court.

The decision of this court in County of Ralls *v.* Douglas, 105 U. S. 728 is not upon the question here involved. The point in that case was, viz: whether the members of a county court were *de jure*, its officers, was a question which could not be considered in a collateral proceeding, that if the *de facto* officers were acting as such, their acts were valid, so far as the rights of the public or third persons having an interest in such acts, were concerned. But the question we are presenting is, that the Dallas County officers have never *de facto* acted as a county court; that on one occasion there was no court and hence no order; that on another occasion there was a special term without any conformity with the statute which alone could authorize it, so we say the orders were not made by any county court *de jure* or *de facto*.

It will be observed that this case is distinct from almost every other yet decided; because there have been no acts

of estoppel as against the county or county court, no act of recognition, there is nothing but the naked bond, and its recitals. Dallas County has received no benefit, committed no act of recognition, is guilty of no breach of faith, and has the same right to contest the validity of these bonds that it had on the date of their execution.

III.

The issue of bonds involved in the present suit have been held absolutely null and void by the Supreme Court of the State of Missouri, in a direct proceeding to contest their validity.

State ex rel; Barlow *v.* Dallas County, 72 Mo. 329.

This was a proceeding to compel the county court of Dallas County to pay the interest on these bonds. The defence was, that under the act of March 23, 1861 (Sess. 1860–61, p. 60), the bonds were void, because by the second section of said act it was provided: "It shall not be lawful for the county court of any county to subscribe to the capital stock of any railroad company, unless the same has been voted for by a majority of the resident voters who shall vote at such election under the provisions of this act."

It is stipulated in the case at bar that no such vote, as by this act was required, preceded the subscription of stock by Dallas County to the Laclede and Fort Scott Railroad Company.

Hence, so far as a State court may, in the mysterious economy of our form of government, be permitted to speak to State officers concerning State laws, on an issue which depends upon an exercise of the State right, called taxation, the question is settled.

JOHN P. ELLIS,
Attorney for Plaintiff in Error.

110 -686

FILED
DEC 17 1883
JAMES H. McKENNEY, CLERK

UNITED STATES OF AMERICA,

IN THE SUPREME COURT.

OCTOBER TERM, 1883.

DALLAS COUNTY, IN THE STATE OF MISSOURI,
Plaintiff in Error,
vs.
JOHN W. McKENZIE,
Defendant in Error.
} No. 186.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF OF DEFENDANT IN ERROR.

THOS. C. FLETCHER,
GEO. D. REYNOLDS,
Attorneys for Defendant in Error.

Pierce Bros. Printers 118 North Third Street.

UNITED STATES OF AMERICA,

IN THE SUPREME COURT,

OCTOBER TERM, 1883.

DALLAS COUNTY, IN THE STATE OF MISSOURI,
Plaintiff in Error,
vs.
JOHN W. McKENZIE,
Defendant in Error.
No. 186.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE

BY DEFENDANT IN ERROR.

Defendant in error, a citizen of New York, in 1872, purchased, in the course of business, for value, and in good faith, relying on the recitals therein contained, certain bonds issued by the County Court of Dallas county, Missouri, which bonds are as set out on page 32 of the record in this cause, and are in the usual form of Mo. R. R. bonds Certain interest coupons on said bonds becoming due and remaining unpaid, defendant in error, in 1873, brought his suit on said coupons in the Circuit Court of the Western District of Missouri. There was an answer, not sworn to, to which a demurrer was interposed. The demurrer was sustained and judgment given for plaintiff (defendant in error here). A writ of error was sued out to this court, and

at the October term, 1876, of this court the judgment was reversed, [see 94 U. S., p. 660.]

On the case being remanded to the Circuit Court, defendant in error withdrew his demurrer and filed his replication to the answer, denying any knowledge or information as to any of the alleged acts of commission or omission on the part of the county court set up as defenses, and averring that he became the holder and owner of the interest coupons sued on *bona fide*, for value, without notice or information of any fraud, irregularity, or informality in the issue of said bonds, if any existed.

The following stipulation was filed in the cause and entered of record (see page 33 printed transcript):

"Now come the parties herein, by their respective attorneys, and stipulate that the following facts and proofs, subject to all objections for irrelevancy and incompetency, are the evidence at the trial of the above cause:

1. The copy of the bond hereto attached, marked "A," is a true copy of each bond of the issue of $85,000, involved in this suit, except the numbers thereof, which numbers run from 1 to 85. [Ex. "A" is on page 41 transcript.]

2. That said 85,000 dollars of bonds are issued according to their import in pursuance of the following orders marked "B," "C," "D," and set out at pages 42, 43, 44, 45, 46 and 47 of the printed record.

3. That plaintiff (defendant in error) is the *bona fide* holder for value of the coupons sued on and is a citizen of the State of New York.

4. That previous to the order dated May 18th, 1871, the county of Dallas had subscribed to the capital stock of the Laclede and Fort Scott Railroad Company $150,000, and had issued its bonds in payment thereof, which were then a subsisting indebtedness.

5. That at said date, to-wit: May 18th, 1871, the last annual assessment of the County of Dallas was $1,461,545.

6. That no vote of the tax-payers, citizens, or people of Dal-

las county was ever had or held to authorize the subscription of $85,000 to the capital stock of the said railroad company, nor was the proposition to so subscribe ever submitted to a vote of the tax-payers, citizens, or people of Dallas county. And it is stipulated that the objection to the validity of said bonds on account of the want of such vote last above mentioned may be considered at the trial the same as though set up in defendant's answer.

7. That the act of incorporation of the Laclede and Fort Scott Railroad (hereto attached, marked "E") is the act referred to in plaintiff's petition and in the bonds (see record page 37 for this act, and particularly the 14th sec. of the act on page 40 of the record).

8. That a trial by jury is waived in this cause."

The cause was submitted to the court and tried on April 18, 1878, during the April term, 1878, and on the 22d of November, 1878, at the November term, 1878, the court found in favor of plaintiff below (defendant in error) and rendered judgment in his favor for $5,933.$\frac{67}{100}$. (See p. 34, transcript.)

No exceptions were saved at that term, nor at the trial term.

On the 29th of November, 1878, in pursuance of a stipulation entered into November, 27th, 1878, (see transcript, p. 35), a motion for a new trial was filed as follows: Now at this time comes the defendant, and moves the court to set aside the finding and judgment of the court in the above entitled cause, for the following reasons, to-wit:

Because the finding of the court is against the facts and law of the case: because the court erred in rendering judgment for the plaintiff, and should have been for the defendant."

On the 17th of November, 1879, a year afterwards, the plaintiff below submitted the above motion to the court, (see p. 35 transcript). The defendant below never paid any further attention to it, so far as the record shows, after it was filed.

Eight months afterwards, to-wit: July 7, 1880, at an adjourned session of April, 1880, term, the court overruled the motion, (see p. 35 transcript), and "thereupon there is presented to the court a bill of exceptions in the above cause." (See p. 35, transcript).

When the bill of exceptions was taken or signed, does not appear.

From what purports to be a bill of exceptions, (see p. 36 transcript), it appears that "*on the*————————day of————187—, being the day of the term of said court, the above entitled cause coming on to be heard before the court, a jury having been waived, the following proceedings were had:"

The plaintiff offered and read 1st, the stipulation theretofore filed; 2d. The charter of the L. & Ft. S. R. R. Co., approved January 11, 1860. Section 14 of said charter provided, (see p. 40 transcript): "It shall be lawful for the county court of any county in the State to subscribe to the capital stock of said company, or invest its three per cent. fund or any other internal improvement fund belonging to the county, as stock in said road; and for the stock subscribed in behalf of the county may issue the bonds of the county to raise the funds to pay for the same, and to take proper steps to protect the interests of the county: may appoint an agent to represent the county, vote for it, and receive its dividends." 3d. Plaintiff read in evidence a copy of one of the bonds from which the coupons in suit were taken, being exhibit A in the stipulation, from which it appears that the bond was in usual form, dated December 28, 1871, promised to pay the L. & Ft. S. R. R. Co., or bearer $1,000 fifteen years after date, interest payable semi-annually on presentation and surrender of annexed coupons, and recites that it "is issued pursuant to an order of the county court of the county of Dallas, made on the 18th of May, 1871, (and amended June 19th, and August 12th, 1871), by authority granted in the charter of the Laclede and Fort Scott Railroad Co., approved January 11,

1860." It purports to be executed by the county, by the presiding justice of the county court, under the order of said court, and by the clerk under said order attesting the same, and affixing the seal of said court, and to bear the signatures and seal. (See pages 41 and 42 transcript). 4th. Plaintiff then read (pages 42 to 45) a certified copy of the order of May 16, 1871, made at an adjourned term of the county court, for an additional subscription of $85,000 to the capital stock of the railroad and for the issue of bonds to pay for it.

(" To the introduction of which the defendant, under the rights reserved in said stipulation, objected, because:

1st. It is not an order referred to in the bond.

2d. It is not evidence of a lawful session, or act of the County Court.

3d. There is no order of said court in evidence showing how this was an adjourned term.

4th. It is irrelevent and incompetent, and according to its terms did not authorize the issue of the bonds in controversy.

Which objections were by the court overruled, and the same were read in evidence, to which ruling the defendant at the time excepted"), says the so-called bill of exceptions (p. 45 transcript).

5. Plaintiff then read the order of June 19th, 1871 (pages 45 to 47), to which substantially the same objections were made and substantially the same form of exception alleged to have been taken.

6. Plaintiff then read the order of Aug. 7th, 1871 (page 47), to which, in addition to substantially the same objection, a general one of irrelevancy and incompetency was added, and the same form of exception alleged.

7. Plaintiff finally offered the coupons sued on which are in usual form, "to the introduction of each and everyone of said coupons the defendant objected, because it had not been shown that the county court had power to issue them. Overruled and defendant excepted at the same time."

(p. 48.) This is substantially all that the so-called bill of exceptions contains.

On July 7th, 1880, defendant below filed an appeal bond, and the case is now here on writ of error.

The opinion of the Circuit Court, page 50 of record, states succinctly the questions raised and the law of the case.

POINTS AND AUTHORITIES.

I.

The action of the court below on the admission of testimony is not properly open to review by this court, for the reason that no exceptions have been properly saved. From an inspection of the record it will be seen that the finding and judgment of the court were not excepted to. They were rendered Nov. 22d, 1878, at the November term, 1878, (see page 34 of record), the cause having been tried and submitted at the April Term, 1878, (see page 32 of record). It does not appear when the so-called bill of exceptions, contained on pages 36 to 49 inclusive of the printed record, was tendered or filed. It must appear affirmatively when this was done.

Pomeroy's Lessee v. Bank of Indiana, 1 Wall. 592.

By the Missouri practice act, see Rev. Stat. Mo. 1879, Sects. 3635 and 3636, pp. 619 and 620—and these sections were in force in 1849, and ever since that date—it is provided as follows:

"Sec. 3635. Whenever in the progress of any trial, in any civil suit pending in any court of record, either party shall except to the opinion of the court, and shall write his exceptions and pray the court to allow and sign the same, the person composing the court shall, if such bill be true, sign the same."

"Sec. 3636. Such exception may be written and filed at the time, or during the term of the court at which it is

taken, and not after. All exceptions taken during the trial of a cause or issue before the same jury, shall be embraced in the same bill of exceptions."

Under these sections the bill of exceptions is improperly embraced in the transcript.

Sheppard v. Wilson, 6 How. 260.
Walton v. U. S., 9 Wheat. 651.

While it is true that the bill of exceptions states on page 48 of the printed transcript that "on the same day the defendant filed his motion for a new trial;" yet an inspection of the *record proper* shows that this could not have been true, for on page 35 appears a stipulation by counsel "that motion for new trial and in arrest may be filed without prejudice, at any time during the present term of said court by said defendant," which stipulation is dated St. Louis, Nov. 27th, 1878, five days after the entry of judgment, and this stipulation was not filed until Nov. 29th, 1878, so that evidently the motion itself was not filed till then.

Section 3705, Rev. Stat. Mo. 1879, p 631—in force then —provides as follows: "All motions for new trials and in arrest of judgment, shall be made within four days after the trial, if the term shall so long continue; and if not, then before the end of the term."

A motion for a new trial being unnecessary in the Federal courts, its pendency could not carry the case over from the November term, 1878, to the April term, 1880.

II.

Even if it is considered that there is a proper bill of exceptions in the record, it does not save the exceptions to the action of the court on the admission of testimony. Treating the motion for a new trial as carrying the case over to the April term, 1880, yet that motion did not assign error on the admission of testimony; it only assigned two grounds of error:

1st. That the finding is against the law and the facts.

2d. That the court erred in rendering judgment for the plaintiff; it should have been for defendant.

III.

But granting for argument, that exceptions have been properly saved, the judgment should be affirmed.

Section 3653, Rev. Stat. Mo. 1879, which was the law in force when this action was commenced and tried, and is Sec. 45, 2 Wag. Mo. Stat. p. 1046, provides that "when any petition or other pleading shall be founded upon any instrument in writing, charged to have been executed by the other party, and not alleged therein to have been lost or destroyed, the execution of such instrument shall be adjudged confessed, unless the party charged to have executed the same deny the execution thereof by answer or replication verified by affidavit."

The following section (3654) in the Rev. Stat. of 1879, construing section 3653, did not contain the words "nor any county, city or town sued upon any instrument alleged to have been executed by such county, city or town, or any corporate authorities," until after the first day of November, 1879, (see Rev. Stat. 1879, p. 531, Sec. 3168) when they first took effect as an amendment to Genl. Stat. of 1865, §46, p. 677 (or Sec. 46, p. 1046, 2 Wag. Mo. Stat.), which was after the answer was filed and the case tried, and judgment rendered therein.

The answer was not verified by affidavit, so that the execution of the bonds and coupons stands confessed.

It is admitted of record that defendant in error is the *bona fide* holder, for value, of the coupons sued on. (See point 3 in stipulation, p. 33).

It is admitted that the act referred to in the petition and recited in the bonds, is the one set out on page 37 of the record, approved January 11, 1860.

Referring to Sec. 14 of said act (p. 40), it will be seen that the County Court had authority to issue the bonds without a vote of the people.

These facts are sufficient, under repeated decisions of this court, to sustain the judgment of the lower court, irre-

spective of any or all informalities, irregularities or defects of the mode of execution of the power conferred on the County Court, and render any investigation into the action of the lower court in its rulings on the admission of the orders in question (which are the only rulings pretended to have been excepted to) unnecessary.

County of Ralls v. Douglass, 105 U. S. 728, in which last cited case this court expressly refused to follow State v. Dallas Co., 72 Mo. 329.

IV.

But if the rulings of the trial court in admitting the testimony objected to are open to examination, there is no error in them.

The orders in plain terms make an additional subscription by the County Court of Dallas to the stock of the Laclede and Fort Scott Railroad Company of $85,000, and direct the issue of the bonds, and prescribe the form of the bond precisely as the bond in evidence, (see record, page 43.)

Even if it be decided that the orders of May 16th and June 19th, were not made at authorized terms of the court, and that that is a valid objection to the bonds in the hands of a *bona fide holder*, yet the order of August 7, 1871, (see page 47 of transcript) was made at a regular term and is a waiver of any precedent irregularities. Under this last order, made at a *regular term*, the bonds were finally placed on the market.

V.

When this case was here before, it was reversed for error of the lower court in sustaining a demurrer to the answer, with leave to plaintiff below to withdraw the demurrer and file reply. This he did, taking issue on all the material defenses set up in the answer.

It is submitted that the points which this court indicated

in that decision as vital to the case, have now been fully met (see the opinion in 94 U. S., 660), and that there is now no error in the record on which this case should be reversed.

VI.

In 1867, the Supreme Court of Missouri, in the case of State *ex rel.* Mo. and Miss. R. R. Co. v. Macon County Court (41 Mo. 453), settled the law of the State to be, that authority to the County Court to subscribe to the stock of a railroad company, expressly given by the charter of the company, was not affected by subsequent general laws requiring a vote of the people to authorize such subscriptions. This was the well-settled law in Missouri when the bonds referred to in this case were issued, and when this defendant in error bought them, and was again and again reiterated as the law of this State, by the Supreme Court of Missouri, and as such was adhered to at the date of this judgment, and for four years afterwards. This whole subject, as well as the decisions of the Supreme Court of Missouri, was fully considered by this court in *County of Ralls v. Douglass*, 105 U. S. 728, and the older decisions of the State court followed.

VII.

It is confidently asserted that it will be held as the law of this case, as so often announced by this court, that in the hands of a *bona fide* holder the recitals of the bonds are conclusive and binding on the county.

Town of Colonia v. Eaves, 92 U. S. 484.
Mavey v. Township of Oswego, 92 U. S., 637.
County of Clay v. Society for Savings, 104 U. S. 579.

THOS. C. FLETCHER,
GEO. D. REYNOLDS,
Attorneys for Defendant in Error.

110-686

In the Supreme Court of the United States.

DALLAS COUNTY,
Plaintiff in Error.

vs.

JOHN W. McKENZIE,
Defendant in Error.

No. 186.

In error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

J. B. HENDERSON,
Attorney for Defendant in Error.

Press Print Printers, 11 North Third Street.

In the Supreme Court of the United States.

DALLAS COUNTY,
Plaintiff in Error.
vs.
JOHN W. McKENZIE,
Defendant in Error.
No. 186.

In error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT OF CASE BY DEFENDANT.

On January 11, 1860, the General Assembly of Missouri passed an act to incorporate the Laclede & Fort Scott Railroad Company. For copy of the act see record, pages 37 to 41, inclusive.

The 7th section of the act gave the company authority to construct and operate a road, "commencing at some point in Laclede County, by the most direct and practicable route, through the counties of Laclede, Dallas, Polk, Cedar and Vernon, in the direction of Fort Scott in Kansas Territory." (Record, p. 38.)

The 14th section provides that "it shall be lawful for the county court of any county in the state to subscribe to the stock of said company * * * and may issue the bonds of the county to raise the funds to pay for the same." (Record, p. 40.)

The company, having organized proceeded, to grade the road through Laclede and Dallas counties. Previous to May 16, 1871, Dallas county had made a subscription to the stock of the company, which being deemed insufficient to complete the grade in the county, the county court, on the day last named, adopted and spread on its records an order in the following words, to-wit: "It having been satisfactorily shown to this court by proper estimates that a further subscription to the capital stock of said company of the sum of eighty-five thousand dollars is necessary to complete the grading, masonry and bridging of said road-bed, so as to have the same ready for the ties within the limits of Dallas County, and it further appearing, by the request of numerous tax-payers of said county, that a further subscription to the capital stock of said Laclede & Fort Scott Railroad Company is recommended, it is therefore ordered by this court that the County of Dallas, in the State of Missouri, subscribe to the capital stock of said railroad company the sum of eighty-five thousand dollars, as an additional subscription to that heretofore made, and that said sum is hereby so subscribed, subject to the following conditions," etc. (Record, pp. 42-3.)

Then follow the conditions, one of which is, that the subscription shall be paid in Dallas County bonds of the precise description of those subsequently issued, and the coupons of a part of which are involved in this suit. Another condition is, that the bonds shall not be issued until the court shall have satisfactory evidence that Laclede County had made provisions to complete the road-bed in said county, nor "until some able and reliable company shall have agreed and bound itself to equip said road." (Record, p. 43.)

It is also provided in this order that a financial agent be appointed for the county, having power, with the consent of the county, to negotiate the sale of said bonds, and that he should place the proceeds of such sale in some reliable bank in St. Louis, procuring a good rate of interest on the deposit. The said agent is authorized to pay out the money so deposited on monthly estimates of the chief engineer of the company for work done in the county, and he is specially *ordered* to pay all expenses for engineering work done in the county; and, on the payment of bills rendered for work done and for engineering, said agent is required to procure from the company certificates of stock for the full amount so paid. After assuring the agent of a reasonable compensation for selling the bonds and disbursing the proceeds, the order provides that the county shall retain control of the bonds until sold, and of the money after sale until it is paid out by the agent of the county, as specified. (Record, pp. 43, 44.)

The order of June 19, 1871, makes some amendments in the form of the bonds to be issued, and provides for the better protection of the county's interests, that an engineer appointed by the county court shall measure up the work done before it is paid for by the agent from the proceeds of the bonds. (Record, p. 46.)

In the order of August 7, 1871, adopted at a regular term of the court, it is recited that a contract has been entered into between the railroad company and George A. Fitch and his associates, requiring that the bonds shall be promptly signed up and placed in the hands of a trustee or trustees, to be agreed on between Fitch and the railroad company; and thereupon it is ordered that the county agent shall proceed at once to have the bonds lithographed and returned

for the signatures of the presiding justice and the clerk of the court, and that the bonds shall be at once "signed and placed in the hands of said trustee or trustees" so agreed on between the railroad company and the contractors. The agent is required to procure a settlement between the company and Edward Burgess, a former contractor, and the order provides that the bonds to be issued shall not pass from the control of the court to that of the trustee until Fitch & Co., the present contractors, shall have given a proper guarantee for the faithful performance of their obligations to do the work under their contract with the railroad company. (Record, p. 47.)

A copy of the bond will be found on page 32 of the record.

The case was submitted to the court under a stipulation of counsel for plaintiff and defendant as follows, to wit:

1. That the eighty-five bonds, each for one thousand dollars, were issued in pursuance of the orders herein recited.

2. That the plaintiff is the *bona fide* holder for value of the coupons sued on.

3. That previous to May 18, 1871, Dallas County had subscribed to said railroad company $150,000, and issued its bonds therefor, and that said bonds were then outstanding.

4. That the last annual assessment of the county previous to May 18, 1871, was $1,4 1,545.00.

5. That there was no vote of the people authorizing the subscription, and no proposition to that effect submitted to the voters.

The circuit court held the bonds to be valid, and gave the plaintiff below a judgment against the county for the amount of the coupons sued on.

ARGUMENT AND AUTHORITIES.

The record in this case presents but two questions for the consideration of the court.

I.

The first is whether a vote of the people was necessary to the validity of the bonds, and on that question it is enough to say that the act incorporating the Laclede & Fort Scott Railroad Company was passed prior to the adoption of the constitution of 1865, and the provision in said constitution prohibiting subscriptions by counties to railroad corporations, without a vote of the people, did not operate to prevent the county court from subscribing the stock mentioned in this case without such vote.

In the language of this court, following the rulings of the Missouri courts, the provision was intended as a limitation on future legislation only, and did not operate to repeal enabling acts in existence when the constitution took effect.

County of Ralls v. Douglas, 105 U. S. R., 728.

To the same effect see—

State v. Macon County Court, 41 Mo., 453.

Kansas City, &c., R. R. Co. v. Alderman, 47 Mo. 349.

State v. County Court of Sullivan County, 51 Mo., 522.

State v. Greene County, 54 Mo., 540.

Smith v. Clark County, 54 Mo., 58, *et seq.*

County of Calloway v. Foster, 93 U. S., 567.

County of Scotland v. Thomas, 94 U. S., 682.

County of Henry v. Nicolay, 95 U. S., 619.

County of Cass v. Gillett, 100 U. S., 585.

II.

The second question springs out of the difficulty presented by the Act of March 10, 1871, of the General Assembly of Missouri, limiting the power of county courts in the subscription of railroad stock to an amount not exceeding ten per cent of the last annual assessment of the county.

This question, like the first, has been abundantly settled by the decisions of this court. In the case of Marcy v. Township of Oswego, 92 U. S., page 639, where the same question was presented, this court held as follows: "It is to be observed that every prerequisite fact to the execution and issue of the bonds was of a nature that required examination and decision. The existence of sufficient taxable property to warrant the amount of the subscription and issue was no more essential to the exercise of the authority conferred on the Board of County Commissioners than was the petition for the election, or the fact that fifty free-holders had signed, or that three-fifths of the legal voters had voted for the subscription. These are all extrinsic facts, bearing not so much on the authority vested in the board to issue the bonds, as upon the question whether that authority should be exercised. They are all by the statute referred to the inquiry and determination of the board, and they were all determined before the bonds and coupons came into the hands of the plaintiff. He was, therefore, not bound when he purchased to look beyond the act of the legislature and the recitals which the bonds contained."

In the case of Humboldt Township v. Long *et al.* the same question was presented, and the majority of this court held as follows:

"The assessment rolls of the township may have been

proper evidence for the consideration of the Board of County Commissioners, when they were inquiring what the value of the taxable property of the township was; but the bonds are not invalid in the hands of a *bona fide* holder by reason of their having been voted and issued in excess of the statutory limit as shown by the rolls. Whatever may be the right of the township as against those who issued the bonds, it can not set up against a *bona fide* holder of the bonds that the amount issued was too large in the face of the decision of the board, and their recital that the bonds were issued pursuant to and in accordance with the Act of 1870." (92 U. S. 642.)

III.

The attorney for the county objected on the trial to the introduction of certain orders of the county court, giving authority to issue the bonds in question, because the dates of said orders were not the same as recited in the bonds themselves, and because the orders as presented were not specially referred to in the bonds as issued.

The same objection was raised in the case of Smith *et al.* v. the County of Clark, 54 Mo., 58. In that case the court said: "but it is objected that the bonds in controversy on their face purported to be issued under the act of 1855, and the holder is estopped from claiming that they were issued under the special act of 1857, which was the charter of the company. Whether the recital in these bonds would constitute an estoppel against the makers, it is not important to inquire; if it were so, it would not follow that the purchaser or holder is bound. If he can show that the power existed, a false recital of it, however obligatory

of the county or its agents, would not defeat its efficacy in the hands of a party nowise concerned in the perpetration of the falsehood."

IV.

Another objection presented by the county's attorney in the court below was that one of the orders purported to be made at a special term and another at an adjourned term of the county court, and that the plaintiff in the court below failed to show affirmatively that said terms were legally held.

By examining the orders objected to, it will be observed that the clerk certifies in reference to that of May 16, 1871, as follows: "Be it remembered that at an adjourned term of the county court, in and for the County of Dallas and State of Missouri, begun and held in the town of Buffalo, on Tuesday the 16th day of May, 1871, there being present J. R. Gammon, W. K. Jump and Nathan White, justices of said court, and John O'Bannon, sheriff, and W. J. Loafman, clerk of said court, when and where the following proceedings were had and orders made,"

In reference to the order of June 19, 1881, the clerk certifies as follows: "Be it remembered that at a special term of the county court of Dallas County, in the State of Missouri, called by the presiding justice of said court for the purpose of instructing the agent of said county, * * * also to make changes in the railroad order made at the May term of this court, begun and held at the court house in Buffalo, on the 19th day of June, 1871, there were present J. R. Gammon, Nathan White and W. K. Jump, justices of said court, John O'Bannon, sheriff, and W. J. Loafman,

clerk of said court, when and where the following proceedings were had and orders made."

The Statutes of Missouri (see Wagner, Vol. 1, p. 442, secs. 18 and 19) authorized the county courts to hold adjourned terms at any time. The president or any two justices of the county court may order a special term, whenever the business and interest of the county may require it. It is only necessary that the members of the court not joining in the call shall have notice of five days before the commencement of the term. In this case it will be observed that all the justices were present and engaged in transacting the business of the court. In such cases the notice required by law is not essential. If the members of the court assemble and publicly transact business for the county, so far as their acts may be within their jurisdiction, they are binding on the county and on all other persons interested.

The acts of an officer, even *de facto*, whether judicial or ministerial, are valid so far as the rights of the public or third persons having an interest in such acts are concerned.

County of Ralls v. Douglass, 105 U. S. 728.

The power to order adjourned terms or to call special terms being lodged in the tribunal itself, the records of the county court, showing that such terms were actually held, are conclusive of the fact. When power is delegated to a tribunal over a certain subject-matter, and its exercise is confined to the discretion of such tribunal, its acts are binding as to such subject-matter.

U. S. v. Arrendondo, 6 Pet., 691.

Allen v. Blunt, 3 Story, 742.

When the court is once assembled, either in adjourned or